

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



*Orig w/ affidavit of mailing*

**75-1345**

*PRS*

**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

**Docket No. 75-1345**

UNITED STATES OF AMERICA,

*Appellee,*

*—against—*

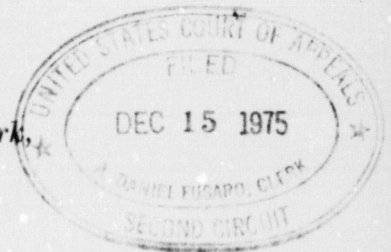
DOMINICK SEMINARA and STEPHEN LENT,

*Appellants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

**GOVERNMENT'S APPENDIX**

DAVID G. TRAGER,  
*United States Attorney,  
Eastern District of New York,  
Attorney for the Appellee.*



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## INDEX TO GOVERNMENT'S APPENDIX

	PAGE
Letter of February 6, 1975 .....	A-1
Transcript of January 31, 1975 (Minutes of Pre-Trial motions) .....	A-3
Transcript of November 21, 1973 (Hearing before the Attorney General of the State of New York) .....	A-11
Transcript of November 14, 1973 (Hearing before the City of New York Department of Consumer Affairs) .....	A-61

February 6, 1975

Albert Pincus, Esq.  
2950 Hempstead Turnpike  
Levittown, New York 11756

Re: U.S.A. v. Foto Factory Limited

Dear Mr. Pincus:

On Friday, January 31, 1975, Judge Bartels denied the motions of both defendants to dismiss the indictment and to suppress evidence. Defendant Lent's motion to inspect grand jury minutes was also denied.

With respect to defendant Lent's request for discovery as set forth in paragraphs 5 through 7 of his attorney's Affirmation dated January 27, 1975, we are furnishing the following answers:

5.(A) The specific amount involved in each transaction is alleged in each count of the indictment and it is \$9.95.

(B) Rockville Centre, New York Post Office.

(C) The date is set forth in each count of the indictment. The time of mailing is unknown and the place of mailing would be the Rockville Centre, New York Post Office.

(D) The materials transmitted through the mail are available for inspection at the office of the United States Attorney.

(E) Payment was made to the merchant credit card accounts of Foto Factory Limited by the National Bank of North America, First National City Bank and the Chase Manhattan Bank.

Albert Pincus, Esq. /2/ February 6, 1975

(F) Photocopies and originals of some of the credit card sales slips that were received by the respective banks from Foto Factory Limited in the possession of the Federal Government are available for inspection and reproduction at the office of the United States Attorney.

6. None.

7. None.

Numerous complaints of victims of the scheme alleged in the indictment are in the possession of the Government and are available for inspection at the office of the United States Attorney.

Very truly yours,

DAVID G. TRAGER  
United States Attorney

By:

Harold J. Friedman  
Assistant U. S. Attorney

cc: Robert Rivers, Esq.  
287 Post Avenue  
Westbury, New York 11590

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 -----X

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 - against -

74 CR 765

7 STEPHEN LENT and DOMINICK SEMINARA,

8 Defendants.

9 -----X

10  
11 United States Courthouse  
12 Brooklyn, New York

13 January 31, 1975  
14 9:30 A.M.

15 B e f o r e :

16 HON. JOHN R. BARTELS, U. S. D. J., Sr.  
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23 ILENE GINSBERG  
24 OFFICIAL COURT REPORTER  
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**A P P E A R A N C E S :**

**DAVID G. TRAGER, U.S. ATTY.**

**BY: HAROLD FRIEDMAN, AUSA**

1  
2 THE CLERK: Criminal motion, U.S.A. v. Stephen  
3 Lent and Dominick Seminara.

4 MR. FRIEDMAN: I don't see anyone in the court-  
5 room for the defendants.

6 THE COURT: Have you given these gentlemen  
7 everything they wish?

8 I wish the record to show that I have examined  
9 the motions made by Dominick Seminara to dismiss the  
10 indictment on the ground that the indictment is vague,  
11 uncertain, inadequate and secondly, that the Grand  
12 Jury improperly considered evidence seized illegally  
13 by the United States and that the prosecution under  
14 this indictment would expose the defendant to double  
15 jeopardy.

16 The defendant Stephen Lent moves for an order  
17 to inspect the Grand Jury proceedings in order to  
18 ascertain whether or not there was sufficient evidence  
19 to establish a true bill; for a bill of particulars;  
20 copies of all statements made by Lent to the Govern-  
21 ment; the production of exculpatory information and  
22 evidence illegally seized.

23 What do you have to say as to that motion?

24 Let's take up Dominick Seminara first.

25 I don't know if I need to proceed any further

1  
2 because I have read the indictment and I can deny  
3 the motion on that ground.

4 What do you say, Mr. Friedman, of the allega-  
5 tions of the Grand Jury improperly considering evidence  
6 illegally seized by the United States?

7 MR. FRIEDMAN: The Postal Inspector submitted  
8 an affidavit that he is not aware of the Government  
9 seizing any property from the defendant.

10 THE COURT: Do you think he is confused with  
11 an action in the state court?

12 Any way, you deny catagorically that there was  
13 such seizure?

14 MR. FRIEDMAN: Yes, and also, under Calandra it  
15 was held that the exclusionary rule does not apply to  
16 Grand Jury proceedings.

17 THE COURT: What about the charge of double  
18 jeopardy?

19 MR. FRIEDMAN: This Court, in U.S. v. Wapnick  
20 held the contrary and the defendant had three cracks  
21 at it before the United States Supreme Court and re-  
22 hearings as well as cert. was denied-- the defendant  
23 in the Wapnick case.

24 THE COURT: All right.

25 Lent moves for an order to inspect the Grand

1  
2 Jury Minutes.

3 Of course, I know I have to deny the motion  
4 on that ground.

5 Now, he wants a bill of particulars. Why  
6 don't you give it to him?

7 MR. FRIEDMAN: Be glad to. I am just waiting  
8 for Mr. Rivers --

9 THE COURT: You tell him that he is going to  
10 get a bill of particulars and he is also entitled  
11 to statements and exculpatory evidence and I don't  
12 know what he means by "evidence illegally seized."

13 MR. FRIEDMAN: Your Honor, with respect to the  
14 challenge of the indictment on the ground that it  
15 doesn't state a criminal violation under the Mail  
16 Fraud Statute, when you denied the motion, did you  
17 deny it with respect to that aspect?

18 THE COURT: Well, I have the Mail Fraud Statute  
19 right here. I think it is 18 U.S.C. 1841 or 1341.

20 Are you talking about the application of  
21 Seminara?

22 MR. FRIEDMAN: Yes, the defendant Seminara.

23 THE COURT: I went over that. I find it is  
24 not vague.

25 Who drew this indictment, by the way?

1  
2 MR. FRIEDMAN: I did, sir.

3 THE COURT: Count one has fifty counts.

4 MR. FRIEDMAN: It is a fifty count indictment,  
5 yes, your Honor.

6 THE COURT: I don't know what he means by the  
7 statement "it is vague."

8 He has asked for a bill of particulars and you  
9 will give him that.

10 MR. FRIEDMAN: Yes sir.

11 The point I was addressing myself to was, that  
12 the defendant Seminara claimed that the indictment  
13 did not state a violation of the Mail Fraud Statute  
14 because the allegations regarding the written state-  
15 ments being sent out was not material to the scheme.

16 THE COURT: You mean the money back guarantee?

17 MR. FRIEDMAN: Yes -- as alleged in paragraphs  
18 five and six of the indictment.

19 THE COURT: Yes.

20 (pause)

21 THE COURT: You say that he says it is vague?  
22 What is your point? It seems clear to me. I denied  
23 the motion. If you keep arguing I will grant it.

24 MR. FRIEDMAN: No.

25 THE COURT: I don't understand you.

1  
2 MR. FRIEDMAN: Thank you, your Honor.

3 THE COURT: I went over it and told you I  
4 denied it and you come back and say "I think you are  
5 wrong. You better grant the motion."

6 MR. FRIEDMAN: I just wanted to make sure that  
7 you denied the motion in every respect.

8 THE COURT: I denied it in every respect, all  
9 respects.

10 He asked for the indictment to be dismissed and  
11 I denied the motion. I don't have to particularize.  
12 It is a little difficult to give you a favorable  
13 decision, isn't it?

14 (Recess taken)

15 (After recess)

16 (Whereupon Robert Rivers, Esquire entered  
17 the courtroom.)

18 THE COURT: You are too late, Mr. Rivers.  
19 Your motion is decided. I did grant portions of it as  
20 to the bill of particulars and statements made by the  
21 defendants.

22 The other motions were not supported by law and  
23 there are a number of cases on it.

24 There is no double jeopardy here. I have decided  
25 that a number of times and it has gone up to the Supreme

1  
2 Court.

3 The indictment is not vague so if you were here  
4 you would not have done much better, or any better.  
5 Anyway, it is over with. I am sorry Mr. Rivers but I  
6 don't think you lost anything.

7 MR. RIVERS: I think perhaps if I were here I  
8 would have made a point.

9 THE COURT: You know, when I get on the bench  
10 I have already gone over the case carefully so you would  
11 not have helped very much, I'm sure.

12 Well, that's the way it is.  
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BEFORE THE ATTORNEY GENERAL OF THE STATE OF NEW YORK

-----X

IN THE MATTER :

of :

an investigation into the practices of :

KOTO FACTORY LIMITED :

-----X

BEFORE: JAMES B. BROWN, Assistant Attorney General,  
 Office of the Attorney General, 120 Broadway, New York, New York 10038,  
 dated and captioned as above, do hereby certify that on November 21, 1973.

EXAMINATION OF: JAMES B. BROWN, Assistant Attorney General,  
 Office of the Attorney General, 120 Broadway, New York, New York 10038,  
 dated and captioned as above, do hereby certify that on November 21, 1973.

ADVERSE ACTION: JAMES B. BROWN, Assistant Attorney General,  
 Office of the Attorney General, 120 Broadway, New York, New York 10038,  
 dated and captioned as above, do hereby certify that on November 21, 1973.

ADVERSE ACTION: JAMES B. BROWN, Assistant Attorney General, 15  
 CLARKSON, NEW YORK 10044 1A-12A  
 SMITHSON POLMER Oregon 1B-12B

-2-

DONALDICK SEMINARA & MICHAEL LENT  
having first been duly sworn, upon being examined, testified  
as follows:

EXAMINATION BY MR. ROBERTS OF MR. SEMINARA:

MR. ROBERTS: Mr. Seminara, this hearing was called today pursuant to a notice served upon you and Mr. Lent. The two of you are associated with Foto Factory, and it's in order to give you an opportunity to show cause to the Attorney General why proceedings or actions should not be commenced against you, to prohibit certain business practices. Now, I understand that you have an attorney, Mr. George Solleder.

Q Would you first tell us why Mr. Solleder is not here and whether you had discussed with him your appearance here today?

A Mr. Solleder is tied up in a trial today and advised us to put off the meeting until such time that he would be able to accompany us, and I told him that I didn't agree, that I would rather come here and straighten out the problem

-3-

and more or less give the Attorney General's Office some insight as to what we are planning to do, what we are doing and what is happening to it, the company. He apologizes and that's it.

Q So he knows that you are here today and he advised you to postpone the hearing, is that correct?

A Right.

Q You are here of your own desire to explain those matters to the Attorney General's Office?

A Yes. Moreover, before we got notice of the facts that we were to appear, Mr. Solleder called you Thursday of last week to tell you that he had wanted to come up here either on Friday, and at that point you advised him that you wanted to meet with Mr. Rubin (Phonetics) and he called Mr. Rubin and Mr. Rubin told him that a notice was being sent to us, that we were going to appear on Wednesday. So in fact he had the same authority---

Q All right. Now, before I ask my questions, do you have any statement that you would like to make concerning Foto Factory that meets the purposes of this hearing?

A Yes. First of all I would like to go back to the time that Foto Factory began its business. It was approximately a year and a half ago. Its original intent and concept was to sell film and processing by mail or by telephone. A great deal of advertising expense was put into

the program and through the efforts of four partners, we were able to conduct a pretty normal business for about a year or 14 months. At the beginning of 1973 we recognized a problem of being able to conduct the business on a level plane, that the problem that he had incurred---what was happening was that we were getting orders from all over the country and it was very difficult to serve the public as we had intended to do. During the middle of 1973 the company began to have financial trouble, in that we could not meet some of the obligations, and therefore we discussed, the four of us discussed the facts that two of the partners would have to leave the company with the hopes that the other two might carry the company out of the financial difficulties. Foto Factory ran into further problems. [ About the ~~middle~~ of September we ran an introductory offer for Foto Factory mailers, and they were offered a \$22.10 value which was being sold for \$9.95. We advertised in the media; in the newspapers and we got a good response from it. As we got orders we utilized a service computer so that the company would expedite the orders as fast as possible. In the course of this, the tapes that we had of the names and addresses of people that were on our original records and who had done business with us originally, became mixed with our current orders, as well as the introductory

-5-

offer which was being offered. ~~At the time we recognized~~  
~~that error in the mix up, it has taken about 30 days.~~ We are  
in the process now of trying to straighten out the problem  
as best we know. We have sat down with the Federal Trade  
Commission, we have sat down with the District Attorney,  
Racket Squad of Long Island, we had tried to get in touch with  
the Nassau County Consumer Affairs Division, and we tried to  
meet with them, and they refused. We were invited to the  
Nassau County Consumer Affairs Department by the First National  
City Bank who is affected by the mix up, and when we arrived  
at the Consumer Affairs Division, we were told that they would  
not see us, saying that it would be irregular to meet with us  
and the bank. We are here today to explain this problem and  
to tell you how we plan to get out of the trouble because of non-  
shipment of goods and to straighten out the introductory  
offer mix up and to further explain that Foto Factory is no  
longer in the business of selling and processing, that Foto  
Factory is in the business of processing only, not making any  
offers for film and processing. It's not accepting any more  
orders by telephone. We are not utilizing Master Charge or  
BankAmericard any more. At this point we are gearing up  
to straighten out the problems. I had my computer service give  
my a listing of all the people, about 10,000 or 11,000 people

-6-

affected by the mix up, and some of the people should have received other merchandise such as film and processing. Some of the people should have received the introductory offer. Some of the people should not have received anything. A letter was drafted by myself to be sent to everyone of those people after I was able to zero in on the names of the people that were affected. This letter was further corrected by Mr. Kraks (Phonetics) of the National Bank of North America. The letter reads as follows: "Dear Customer: Recently you may have received a "special introductory offer" of prepaid film-processing envelopes valued at \$22.10, which would cost you \$9.95. We have discovered an error in our computer print-out since mailing the offer to you. As a result of that error, the offer was incorrectly mailed to some customers who had not requested it, and charges were processed to their Master Charge or BankAmericard accounts. If you were unable to use these items, we would appreciate the return of the merchandise. Upon receipt of this merchandise and if your account was among those inadvertently charged we will issue a credit to your account. However, if you are waiting for a film order or processed pictures, please specify at the bottom of this letter. Please list below your name, address and credit card account number in the space provided below. A self addressed envelope

-7-

is enclosed for your convenience. Very truly yours, Foto Factory."

MR. ROBERTS: This letter that you just read which is dated November 12, 1973, I would like to mark it as Seminara Exhibit 1.

(Document received and marked as Seminara Exhibit 1)

A (Continuing) During the month of September, Mike Lent and myself made arrangements to buy out Nick Mascara (Phonetics) and Stephen Lent in the hopes of trying to organize the company with limited---the reason why we bought them out was to reduce the company's overhead as well as make it easier for the company to be able to reach a decision or decisions to solve whatever problems that the company was faced with. Mike and myself recently injected the company with some capital. As I said before, we sat down with Mr. Presti of the Federal Trade Commission and Mr. Presti has indicated to me that he recognizes the problems that we have and I told him that I have written to him and I'm going to work with him and his agency as well as all the agencies to straighten out the problem, and in the long run keep the consumers' interest in mind. I have a limited amount of capital and so does Mike. We plan to do some work with the company as best as possible and

process the pictures of the people and try and get out whatever orders are left and to refund people money as we are financially able. To do it will take some time, but I hope in the long run we will be able to save the company as well as straighten out the problems with the consumers. I would like to read a letter that was addressed to me on November 12 from the Federal Trade Commission. The letter reads as follows:

"Dear Mr. Seminara: Enclosed you will find copies of some of the complaints this office has received relative to failure to deliver merchandise or failure to make refunds subsequent to non-delivery of merchandise, by Foto Factory. Enclosed are also five complaints regarding delivery of unordered merchandise. During our meeting of November 8, 1973, you indicated a willingness by Foto Factory to correct all complaints and that the company was actively doing so. It is therefore requested that you forward to me a letter outlining what action has been taken in the above individual cases, what action has and will be taken relative to the unordered merchandise situation and what action has and will be taken to satisfy all other customer complaints received by Foto Factory. It is hoped that this information can be received at the earliest. In addition, it is our intention to advise you of other complaints received by or referred to this office

with what is hoped to be as equally satisfactory results as that expected from the above. Thank you for your continued cooperation in this matter. Very truly yours, Angelo Presti, Consumer Protection Specialist."

Q That letter is dated November 12, 1973, correct?

A Yes.

MR. ROBERTS: Would you please mark this letter (Indicating) to Dominick Seminara from Angelo Presti of the Federal Trade Commission as Seminara Exhibit 2.

(Document received and marked as Seminara Exhibit 2)

A (Continuing) After receiving this letter from Mr. Presti, I proceeded to straighten out the complaints that were enclosed and I answered in letter form what I planned to do as president of the company to straighten out the problems that have been riddling Foto Factory. I don't have a copy of that letter, and lastly I would like to express now that I have been present before the Attorney General's Office, that I am always in complete cooperation in willing to straighten out any problems which have come before the Attorney General's Office.

Q All right. Thank you Mr. Seminara. There are a lot of

things I would like to go over with you to sort of get an idea of the scope of the problems that face you. First of all, in terms of the growth that your company has had since you were last in our office, would you give us some idea of the size of the business and the amount of business you have been doing, and secondly, to get some idea of the number of problems, the amount of money involved in solving these problems, so that we can get some idea of just what the difficulty of the problems facing you is. Now, can you tell me just in terms of gross sales, for example, what the development of the company has been since January, 1973, which was when you were here last? What were the sales then and what happened to them since?

A I would be guessing at the figures. In January, 1973 we were in the area of about a half-million to three quarters of a million dollars. That was in January, 1973. During the spring of 1973 we started to have a decline of business. We stopped advertising in certain areas. As of right now, I would say there are less than 10 orders of film and processing coming in a week. The company was shipping what they were able to ship and they were also shipping back orders and advising the customer that we are no longer in the business of selling film and processing.

Q Do you have any idea of what your sales since

January have been, an approximate figure?

A To what period?

Q To today, the middle of November?

A We did for the year, June 30, 1972 to June 30, 1973, we did a million and a half dollars in business. Since June I would say we did roughly four hundred thousand dollars worth of business, June to, let's say September 30. Since we discontinued all telephone orders, we pulled out our phones since we discontinued all charge orders, Master Charge, BankAmericard, American Express and Diner's Club, which represented 80 per cent of our business. There is no business to speak of right now, and we are not looking further to pursue it.

Q All right. Now, with respect to the complaints that you had regarding non-shipment of cameras, are any of them still open or have all of them been refunded?

A There may be some open for people who are due refunds.

Q How do you know which ones and which ones have been finished?

A I am in the process of compiling that information. It doesn't involve much money. For all unshipped camera orders, it's---I don't think that it's more than \$3,000 worth of orders.

Q Do you have a camera inventory at this point?

A No.

Q Are you shipping any?

A No.

Q So that all of the unshipped cash refunds?

A Hopefully.

MR. LENT: Th

type that Mr. Roberts talked wound down to one particular because if other models became available and that by the records. The one that to is Model 60 of the Kodak

MR. SEMINARA

I was going to refund the cost of the inventory of cameras, with the problem, what I am planning to write a letter to the customers requesting them to send me back a letter in a form which I will provide saying that if they want the camera, and I will send them the camera, and if they want the refund, I will send them the refund.

Q Now, this figure of \$3,000,

that?

A It's a guess, strictly a guess. I spoke to the girl who handles my service department and the last time I looked there were approximately 50 to 70 complaints in the file regarding cameras.

Q Does she have a separate bunch of files having to do with cameras, complaints for cameras? Are they kept separate from her other complaints?

A No, they are not separate.

Q Do you have a large file cabinet filled with unfilled orders?

A Old orders that were filled, orders that had been filled, including camera orders, film orders, processing orders and now the same girl is handling processing problems when originally I had the service department strictly for that department---

Q That girl is Donna Scuoteguazza?

A Yes.

Q Now, she is in charge of the day to day handling of these service complaints, is that correct?

A No, I'm in charge of that. DS

Q And she works with you in that?

A Right.

Q Do you know how many unfilled orders there are in total?

A Unfilled orders in the file and processing orders total in the dollar amount of approximately \$20,000 to \$25,000, and I am in the process now of negotiating with a film company to ship me half that amount so that I can fill those particular orders.

Q When you say "ship" what does this mean with reference to the processing and sending out of the film? Do you plan to honor your---

A We plan to honor the processing. We plan to notify people and find out if they want refunds. From the indications of the complaints, from the overall picture, we plan to fill the orders with film that will be sold to me by this company that we are negotiating with. They are selling us \$10,000 worth of film and we will then be able to fill approximately \$15,000 worth of orders.

Q What company is that?

A Fuji Photo. As a matter of fact in a conversation with Mr. Carlos Chapman yesterday, who is the representative of Fuji, I explained the problem I had in filling the orders for film and he has indicated to me that he will work with me in every area, as far as shipping and as far as price in the

hope of getting the problem straightened out.

Q Will you have to pay him in cash for the film that you purchase?

A Yes.

Q So that he is then extending credit and he's letting you have quick delivery of the film?

A He offered to sell me film because he knows of the financial bind, and he's going to sell me the film at a rock bottom price and that price has not been arrived at just yet. We are waiting for the credit manager to get back to me.

Q Are there unfilled orders in the area of just processing alone which have not been done for people who sent you the film?

A In this area, in my expertise the lab, you could put it in a thimble what we have done at the lab. We had a gigantic problem with thousand of rolls of film that needed top processing. I went out and hired expert people who would be working with me in processing the pictures, since our laboratory is geared to do only color prints. As of right now from what was originally 15,000 to 20,000 rolls of film to be processed---my last count this morning showed that it was down to 2,800 rolls left to be sent out to the consumers. Each day I get in approximately 300 rolls to be processed. It's

no problem as far as the processing laboratory is concerned.

Q Are you doing the processing now yourself?

A Yes, in color prints only. The movie film and slide film which needs to be processed is done by Minnesota Mining.

Q Where is their office?

A In Rochester, New York.

Q You mail it up there?

A When an order comes in for processing my girls have to open up the envelopes and prepare the contents to be sent to 3M who in turn processes the work and sends it back to me. I pay for the work C.O.D. and in turn I send out the work to the consumer.

Q How long does that normally take?

A From the time 3M gets it and send it back, it's usually 24 to 48 hours. There has been 5,000 to 6,000 rolls of Super 8 film and general movie film as well as slide film which 3M processed and was holding at the Railroad Express Company until such time that they would be able to get paid. When we took over the company I had to send them a check in the amount of approximately \$3,400 and I am still waiting for that film to come in. The last conversation was this morning with Mr. Herb Snover (Phonetics) who has indicated to us that the

-17-

main office in Minneapolis has waited for the check to clear which I sent them about a week ago, and when that takes place, the Railroad Express will release the thousands of rolls that are lying there to be sent to the consumer.

Q How many employees do you have now?

MR. LENT: About 10.

Q Now, you have been making refunds at what rate? How many a week and so forth?

A Last week we refunded in dollar amount approximately \$1,000 to \$1,500.

Q Is that the usual rate?

A No. The usual rate has been about \$500 to \$700, although it's closer to \$2,000. There is something else. The bank which handles Master Charge, BankAmericard as well as American Express---the bank who handled the accounts disputed orders which consisted of refunds in the amount---it was pretty close to \$2,000 a week and last week it was---I would like to correct that the dollar amount was like \$2,000 and not the original figure that I previously stated.

Q Let's talk first about Master Charge. You do have Master Charge facilities at what bank?

A At two banks. One was the First National City Bank in Rockville Centre and the other was at the Franklin

National Bank in Rockville Centre.

Q These are the banks where you had your business accounts?

A Yes.

Q Now, when you got an order in and charged Master Charge, what did you do? You got an order and it said Master Charge. What did you do, make out a charge slip and send one of those slips to one of those two banks?

A Yes.

Q And when you got paid in cash or by check, what did you do? Did you put the money into your accounts at that time in these banks also?

A Yes.

Q When a refund was made was it issued from your checking account at the bank?

A Relative---

Q A cash refund?

A We made cash refunds when a customer paid by check or cash and we made refunds on credit card buying, issuing credit to ~~these~~ people in the same bank or banks.

Q Is that when a refund was due and the customer has paid by Master Charge, you would then do the reverse of charging and you would issue a credit?

A When the company was financially able.

Q Where did you have facilities for BankAmericard?

A Chase Manhattan Bank in Lake Success and at the National Bank of North America.

Q Where is that located?

A Baldwin.

Q And the Franklin National?

A Rockville Centre.

Q Now, does the company have any bank accounts other than these?

A The company established some bank accounts in Delaware originally and discontinued use of those accounts and established---

Q And you discontinued them?

MR. LENT: There is still one active one in Delaware.

Q What bank is that?

MR. LENT: Bank of Delaware.

Q Where is that, in Wilmington?

MR. LENT: I think so.

Q Now, what funds went into which account? How did you divide the funds? Was there any purpose to it?

A Originally the retail part of our business was

split up serving the mail order part of our business, and therefore, the need for two banks for BankAmericard and the need for two banks for Master Charge was necessary.

Q I see. So that the people who came into your retail store and charged went through which of these accounts?

A Either this was a bookkeeping transaction---it was a question---I don't know.

MR. LENT: The retail on charges were small and I would say most of them went into the Franklin. There was no set way of what went where. It would depend on what we were doing at that time, the amount of the checks---it wasn't a set thing. We had relations with Franklin and Chase.

Q You didn't maintain these accounts for any different purposes? You wanted to maintain bank relations with various banks you put the money into, this depending upon just where you thought you wanted to keep it?

MR. LENT: More or less. There were not set decisions as far as banks would go.

Q You previously had other banks connected with Master Charge and BankAmericard?

A Yes. We had bank relations with Chemical Bank

-21-

which was discontinued when the vice president of the bank, Mr. Kniffen left and the money was refunded. We felt that we should be able to establish bank relations with other banks.

Q At which bank was Mr. Kniffen?

A Chemical Bank.

Q Which branch?

A Rockville Centre. The other bank was Bankers Trust. We established these bank accounts. There was one near where we had our original offices in Oceanside at 2477 Long Beach Road. Then the company moved to Westbury. When we established a sales office in Westbury we had new bank relations and when we moved from Westbury to Rockville Centre we established new bank relations again.

Q What was the Bank of Delaware account for?

MR. LENT: Mainly used as another bank because they were looking for business and we were looking for other banking relationships.

Q Did you ever borrow money from them?

MR. LENT: We were planning to.

Q But you didn't?

MR. LENT: No.

Q Did you borrow money from any of these banks?

-22-

MR. LENT: Yes.

Q Which one?

A Franklin.

Q How much did you borrow from Franklin?

MR. LENT: About \$70,000.

Q When?

MR. LENT: Over the last six or nine months, various times.

Q How much do you still owe them, approximately?

A Somewhere in the neighborhood of \$40,000 to \$50,000.

Q Are they aware of your financial problems?

MR. LENT: Yes.

Q What did they indicate to you? Did they plan to go along and give you further time?

A I sat down with Mr. Gelshanon (Phonetics) yesterday and he has indicated his willingness to cooperate with us as far as the bank is concerned and we will be giving him a plan in the near future of some form to pay out which the company can live with.

Q Now, are you presently doing any advertising?

A None.

Q Do you plan to?

A No.

Q How much business do you have coming in currently, do you know?

A I would like to correct an answer. We plan to advertise. We do not plan to advertise the concept of selling film and processing, but in fact we would like to try and establish a business of selling processing only, wherein a customer will utilize an envelope which we hope to get into their hands via co-op mailings. The customer is directed on this envelope to enclose the proper amount of money along with postage and their film. When we receive their film we will develop it and send the customer back completed pictures or movie film. We also plan route stores. This is terminology--- this is a store that is in the processing business. There are camera stores and film stores that have indicated to us that they would like to do business with us in giving us their work which is highly profitable to us.

Q Can you give us an estimate of how much cash you are receiving right now, per week?

A From where?

Q Any customers at all?

A We are doing now approximately \$1,000 a week in processing orders only.

Q Is this money that is being sent to you by

customers?

A They send in for processing with money and we send the film back.

Q This is not prepaid processing since---where the customer has already paid. You are getting in \$1,000 of new money with film for processing only?

A Yes. We are getting some orders in on film with processing orders roughly in the area of about 10 to 20 orders a week. We fill them immediately. We are accepting orders; however, we are not sending the customer back the reorder form as we did in the past. We are sending them a letter advising them that Foto Factory is no longer in the business of selling film with processing.

Q Were you unable to fill the orders? Are you actually mailing the check and the order to the customer?

A Yes. All charge orders that come in are automatically sent back with a letter advising people that we are no longer in the business of filling orders for film with processing.

Q When you say "automatically" how is that handled?

A A letter will come in from a customer requesting an order for film with processing and they want us to charge it to BankAmericard or Master Charge accounts and we would

simply put it into an envelope with a form letter advising the customer as such.

Q Do you have a copy of that form letter?

A No. I can send it in.

Q Will you send us a copy?

A Yes.

Q Now, when cash orders or when a check comes in, how are those processed?

A An order comes in and the girl that opens the mail checks with me as to the inventory of film, if we have film in stock. If I tell her the order can be shipped, she immediately turns it over to the other fellow who waits seven days and then ships the order. The reason for the wait is that we want the check to clear in the customer's bank.

Q Now, you say that you and Mr. Michael Lent have recently invested additional capital in the company. Can you tell me how much you invested?

A Almost \$25,000.

Q Between the both of you?

A Combined.

Q When was that money put in?

A Within the last 30 days.

Q And was actually put in, in the form of your

personal check payable to the company and d  
company's account?

A Yes.

Q Do you have any idea of the to  
owed by Foto Factory at this time?

A In what area, accounts payable

Q All debts for Foto Factory?

A I would say in the area of acc  
company is indebted for approximately three  
dollars.

(Whereupon, at  
G. Syder relieved J. Kudich as  
reporter, and the hearing cont

(Whereupon, at this time, Glennis Syder relieved Julius Rudich as the Hearing Reporter and the hearing continued as follows:)

EXAMINATION BY MR. ROBERTS:

Q Before I forget, I want to ask you two questions about Mr. Mascara and Stephen Lent. Where does Mr. Mascara live?

A He lives on Sean in Rockville Centre. I don't know the exact number. And Mr. Lent lives in Cold Spring Harbor.

Q All right, now, while we were waiting for the change in Hearing Reporters, Mr. Lent, you broke down the list of approximately three hundred thousand dollars in debts, approximately as follows: Will you confirm this again, please. You stated that you owed your advertising company, Forbes, approximately a hundred thousand dollars. You owe Minnesota Mining and Manufacturing approximately seventy-five thousand dollars. You owe Fuji Photo Film sixty thousand dollars approximately. You owe the Franklin National Bank approximately forty thousand dollars which accounts for two hundred seventy-five thousand dollars. You also indicated that you owed approximately twenty to twenty-five thousand dollars in unfilled orders for

film with processing and about three thousand for cameras. Now, is there anything that you would like to add to that list?

A There is an undetermined amount of refunds that will be due to customers relative to the mixup of our computer tapes which will hopefully get straightened out according to the bank's.

Q Now, you were also mentioning that you had some assets in the firm in addition to the machinery and equipment, namely a ten year lease at the premises 240 Maple Avenue and that you were in the process of trying to rent the whole upper floor which has eighty-five square feet of rentable space, is that correct?

A That's correct.

Q Do you have any other assets?

A The other assets that we have are in the names that are owned by Foto Factory, the names and addresses of people who do business with us by name. For X amount of dollars, normally, we get roughly ten dollars a thousand. So we have been told by these brokers that we are able to generate in riding from fifty to a hundred thousand a year just from renting our list.

Q Who is your accountant?

A Mr. Meyer Schulman.

Q Where is he located?

A North Park Avenue in Rockville Centre, I think it's 64.

Q Where are the books and records of the account that the company maintains?

A At our office.

Q Mr. Schulman visits your office periodically to work on them?

A Yes.

Q You also mentioned before that a Mr. John Amato, doing business as John-John's Group at 500 Old Court Road, Mineola, was another advertising company which you used, is that correct?

A Yes.

Q About what percent of your advertising business did Mr. Amato absorb?

A Previous to our relationship with Mr. Brinker at Forbes Advertising, it was a hundred percent. After our relationship with Mr. Brinker of Forbes Advertising, it went down to approximately ten percent.

Q Do you have any idea what your total assets are at this point?

A At this point, no, I don't. We are basically interested in straightening out the consumer problem so that once that problem is straightened out, I will look at the other side of the coin and find out who I owe money to and all of the people I do business with said that they are willing to work with me on that basis.

Q Now, you mentioned that the mixed up computers which occurred around September led to some ten or eleven thousand people being charged for a mailing of mailers. Did I understand you correctly?

A The introductory offer was offered to the public.

Q Let me go back and see if we can understand exactly what happened. Now, was it your intention to send an introductory offer to a list of potential purchasers?

A No.

Q What was your intention?

A We didn't solicit the public with an introductory offer. We solicited for business by using the radio and by using the newspapers. When orders were phoned in and when they came in by mail, these orders were mixed in with people who did business with us in the past.

A 41

MR. LENT: There was a specific promotion on mailing.

Q Now, I show you a piece of paper and ask you if you recognize it?

A Yes.

Q Now, this piece of paper reads as follows:

"Enclosed is your assortment of prepaid Foto Factory Mailers. One for 12 exposure color film and one for 20 exposure slide film or Super 8 Movie Film.

"When you are ready to develop your film, simply fill out your name and address and enclose film. - SEND NO MONEY - These are prepaid mailers.

"We are certain you will enjoy dealing direct with Foto Factory.

"Be sure not to destroy these mailers. They are worth \$22.10.

MONEY BACK GUARANTEE"

Q To whom was this sent?

A This was sent to a list of people we had thought at the time had requested them.

MR. ROBERTS: Mark this as Seminara Exhibit 3, please.

(The above document was so received and so marked.)

Q Now, this list of persons who were supposed to get this, were they picked by you: how were they chosen?

A 42

A These were people who ordered this. We received orders in the mail and we received orders on the phone, and that's how we know.

Q Did you send orders for your special introductory order?

A Yes.

Q Where were the advertisements placed?

A By radio and by newspapers.

Q Where on the radio. New York City stations?

A Long John Nebel Show, and we also ran it out in the midwest.

Q These ads were placed by Mr. Brinker's firm?

A Yes.

Q In what month did these ads appear?

A In September and October.

Q Now, they also appeared in newspapers?

A Yes.

Q Which newspapers in the New York area?

A Long Island Press, Newark Star Ledger, I can get you that list.

Q Did they appear in other papers in the New York City area?

A I don't think it was in any other paper, it might have been in the Daily News.

Q Up state?

A I am not sure.

Q Approximately how many sponsors did you get from these advertisements?

A This is where the problem comes in. When the sponsors came in we turned them over to the service bureau who in turned gave us a print-out of their names and addresses. And what we did was pin point those people who were affected by it. The number of people on the list we don't know. So therefore, we sent letters which we originally brought to you, to everybody.

Q There was a specific reply, responses from the consumers, and you prepared a list?

A Yes.

Q What did you do firstly to these responses?

A We wrote them up on a sheet.

Q The girls on the phone, when they got a response, they would take down the orders on the form?

A Yes.

Q Who would they hand it to?

A To me, to Mike.

Q Would you sit down and prepare a sheet on it?

A The order was taken in and they were written up, and they were put together, and then it was sent up

and we got letters.

Q Computer service print-up labels, is that it?

A Labels on regular print-ups of those names.

Q What is the name of the computer service?

A Binary Control, Old Country Road in Mincola.

Q And who is the person?

A Mr. London.

Q What is the first name?

A Clay.

Q And what is the name of the other firm?

A Harbor Computer, Alpha Plaza, George Smith.

Q Now, when you would prepare these long list of customers with a special introductory offer, would you mail them over to one of these two firms?

A Or they would pick them up.

Q Were there any other lists that were also sent to these firms?

A These firms maintained all of our lists and tapes.

Q When they get your names, what do they do? Do they put them into computers so that the list would be run off from the computer any time you wished?

A Yes.

Q So these two firms will have a list of your customers, people who you had dealt with. Now, which list did Binary Control have and which list did Harbor Computer have?

A There is no way of telling.

Q Now, you sent the list over to these two companies, did you break them down in any way, or did you just take half of them and send it to one firm and half to the other firm?

A It was basically who was receiving that particular day.

Q What were these two companies suppose to do with these lists that you sent to them?

A Just give us a read out of the total people. Ideally, what did happen was that we sent names over to them to keypunch. They gave back the keypunch card which they were going to write the order from. And evidently, because of the volume, they sent the key card back to them. It looks like the problem occurred when we sent the keypunch card back to them.

Q They took the names and addresses and other information and punched them on a keypunch.

A That's normal.

Q Now, in this case, did both of these firms

send back the keypunch card to you?

MR. LENT: That I don't know at this time.

Q Did one of them send it back to you?

MR. LENT: Probably Binary.

Q What does any keypunch card have on it?

A Addresses and keycard number.

Q Now, they do process the order in a certain way so that when they send the card back to you, you were then in a position to actually send out the merchandise.

MR. LENT: Right.

Q So the only purpose in sending it over to Binary or Harbor was to add this list to the others.

A That's our purpose and to make sure everything was to be delivered when it was suppose to be.

Q Was there a code for the promotion or something?

A No.

Q When the keypunch card came back to you, did somebody in your office sit down and actually take these envelopes and mail them to particular customers?

MR. LENT: That was what was suppose to be done. But evidently because of the binding, we sent them back and that's where the orders and the charging went from.

Q Who prepared the actual mailing, the stuff that was to be sent out? Was that done in your office?

A Yes.

Q Now, what was to be done?

A This is the one that came out.

(The witness hands Mr. Roberts an envelope.)

Q Now, you handed me an envelope which had been returned in the mail to a Mr. Jeffrey Horowitz and inside is a copy of the Seminara Exhibit 3 and several little mailers.

MR. ROBERTS: Can I have them all identified as Seminara Exhibits 4A,B,C,D,E,F.

(The above documents were so received and so marked.)

Q Now, who in your office prepared the envelopes and stuff, them?

A The name of the person is Fred Schroder.

Q Now, how many of these has he prepared, these mailers?

A About ten or eleven thousand.

Q ~~Now, the address stickers, how were they prepared?~~

A From the computer or from the Bank Americard copy that was typed.

Q Now, when you got back the key punch card

you say that you sent them back to either Binary or Harbor is that correct?

A Yes.

Q What were they suppose to do when they got them back this time?

MR. LENT: Give us a list.

Q Typed on what?

MR. LENT: Printed-out.

Q And did you receive a list from them?

MR. LENT: Yes.

Q What did you do with the list after you received them? Did you use the list for some purpose?

A We used the list for the typing of the Bank Americard and Master card charges.

(Whereupon, at this time, Glennis Syder was relieved by Sheldon Woller, and the hearing continued.)

(Whereupon at this time, Sheldon Woller relieved Glennis Syder as the Hearing Reporter and the hearing continued as follows:)

EXAMINATION BY MR. ROBERTS:

Q When you received the list back from your two computer companies, did somebody in the office sit down and type address stickers?

MR. LENT: Yes.

Q Who did that?

MR. SEMENARA: Nobody in particular.

Q You have several girls who do that?

MR. SEMENARA: At that time yes, there were.

Q When they typed the address sticker on, did they type it as a carbon with the original on the charge?

MR. SEMENARA: They probably typed it right on the charge.

Q So, in other words, the typist had a Master Charge or Bank Americard and typed out the order and with the use of a carbon paper or something like that, an address sticker was made and affixed to an envelope, is that correct?

MR. SEMENARA: Yes.

Q I show you a Master Charge charge for \$9.95, dated September 21, 1973, to a Donald A. Duffe, Jr., and ask you if this is the type of Master Charge sticker that was prepared?

MR. LENT: Yes.

Q And similar stickers were prepared f

MR. LENT: Yes.

Q And they all were for \$9.95?

MR. LENT: Yes.

MR. ROBERTS: Can I have this m  
five--Semenara exhibit five.

(Whereupon at this time, the above r  
document was so received and so mark

Q Have you been able to determine how  
were sent out, these Semenara exhibit five char

MR. LENT: Approximately ten to

Q The list that was used by the people  
typing out the charges and the address stickers  
compared that with the list of charges that you  
gotten to see whether they are the same?

MR. LENT: Yes. Some of the ch  
gotten back.

Q Was the list that was used to prepar  
stickers and the charges the list you got back  
Habrord?

MR. LENT: Yes.

Q Would you please explain t me where  
mix-up occurred, now that you've explained the  
how the operation worked?

MR. SEMENARA: We're really not sure. We caught the error after a period of time, just based on the complaints. We've also sent out mailers to a lot of people that were never charged because we stopped it when we found out what the error was.

Q Let me see if I understand that. You already sent it out to ten or eleven thousand people?

MR. SEMENARA: No. He's talking that ten or eleven thousand people were involved on the list. Ten or eleven thousand people were shipped the merchandise. The number of people charged--we don't know at this point.

Q Didn't you make a charge slip out at the same time you made the mailing?

MR. SEMENARA: No. The mailings and shipping was made in bulk.

MR. LENT: There were some done simultaneously. When we shipped the introductory offers out, we shipped them prior to depositing any funds. Then what happened was, when we discovered the error--the reason--the way we discovered it, a customer came into our store and said we never ordered this. This is what brought it to light.

Q Do I understand you correctly, you prepared charges and address mailers, stickers, for all ten thousand customers and you actually shipped the merchandise to ten thousand or eleven thousand customers but didn't send out the charges through to Master Charge or Bank Americard?

MR. LENT: Right.

Q Do you know approximately how many actually did go through to Bank Americard or Master Charge?

MR. LENT: About eight to nine thousand.

Q So then, about eight to nine thousand customers actually had a \$9.95 charge charged to their credit card account?

MR. LENT: Yes.

Q Have you been able to identify by name and address the eight to nine thousand customers who received the charge?

MR. LENT: Yes.

Q And--

MR. SEMENARA: No we haven't. We've just been able to identify the total people involved.

Q So you've identified the ten or eleven thousand names on the list but you don't know at this point which of them did not actually receive the charges?

MR. SEMENARA: That's why the letter went out.

Q What I don't understand is that the girls who were typing the charges and the address sticker working from a list,

was that a different list from the list that should have been  
prepared from the key punch cards that were sent back by  
Binary Harbor. In other words, did Binary Harbor, when they  
got the key punch cards back, make them up with other key  
punch cards and give you the wrong list?

MR. SEMENARA: That is possible also. No,  
really don't know.

Q Were any of the people on the list you got back  
and used, people who had ordered merchandise?

MR. LENT: Yes.

MR. SEMENARA: Yes.

MR. LENT: It was mixed in with people who  
bought it, people that ordered the merchandise,  
people that didn't order it and people that ordered  
film with processing that wasn't shipped. And then  
there were people who did business with us in the  
past and were on the list, a mixture of four different  
things.

Q Have you been able to identify how many of the eight  
thousand people who were charged, approximately, had never  
ordered this particular offer?

MR. LENT: This is what I don't know. This  
is why we've sent a letter.

Q Have you spoken to Mr. London and Mr. Smith, who  
work for these two computer companies?

MR. LENT: Yes.

Q What has Mr. London told you what he thinks happened?

MR. LENT: The only thing is, there was a mix-up of communication between he and I and what I wanted and what he was sending me. He said to me he thought he was sending it right then and when I found out he wasn't--

Q When you sent him the list, did you enclose any written message or list or letter?

MR. LENT: No. We communicated by phone and he asks us--he does what we ask him to do.

Q He sent key punch cards out. Did you send key punch cards to both of these gentlemen, a certain amount to one and a certain amount to another?

MR. SEMENARA: To tell you the truth, we've been so screwed up in trying to correct the problem, we don't know how it happened or why it has happened and it's created a terrible problem for us, plus we're getting the film in to develop which we wouldn't have had in an off season.

MR. LENT: In every case according to the number of rolls of film and we're in an off season, we're getting a lot of people taking pictures.

Q Have you been able to make any estimate of the number of people from among the eight thousand people who received the charges that didn't order the special introductory offer?

MR. LENT: Judging from what's coming in from processing, I have no way of determining--- in other words, how many people are sending in envelopes for processing that came in from the introductory offer, but it's probably 70% of the eight thousand people that ordered versus 30% of people that didn't order. This is like looking at piles of correspondence. Of course, there were four railers in each envelope. It's hard to say; we get these number one sacks of mail in every day and it's hard to say but we're processing it.

Q Now, 70% who did order would leave about 30% that didn't order it and 30% of 8,000 would be about 2,400 customers, is that correct?

MR. LENT: Yes.

Q What arrangements have you made with the bank? Have you told the bank or issued credits to the people who didn't order it?

MR. LENT: There was approximately \$6,000 that was frozen in one account and about another \$5,000

was frozen in another bank, so approximately \$11,000 is being used towards crediting these people's accounts.

Q When you say, "frozen"--

MR. LENT: By the bank.

Q In order to protect them on this?

MR. LENT: Right. The arrangements I made with both banks is that in the event that it goes beyond that amount, I provided them with an I.B.M. list of people that we felt are the people that were affected by the overall list. In other words, people, whether they ordered or didn't order it and they're going to provide me with--well, actually, I'm going to provide them with credits. I'm going to write out credits; as I get these letters back, I'm writing out credits, mailing them to the banks and they in turn--they're crediting the customer in any event and my deal with the bank, if their customer writes their bank, they will issue them a credit and they will give me that name and address so I don't duplicate a credit. That's happened where the customers disputed the sale at their bank, and he had my letter, and we've issued a credit, the bank issued a credit, plus he's used the mailers.

Q Which banks are involved in this particular offering, special offer?

MR. LENT: The Chase Manhattan Bank. The gentlemen that handles the account is Mr. David Schwartz. He's out in the office in Lake Success, Bank Americard Division. He was in to see me and his associates on the entire problem.

Q What about Master Charge?

MR. LENT: It's Mr. Docks, First National City Bank. That's in Melville, Long Island. They were up to see me a few weeks ago and we're working very close with one another to try and see--

Q Do you still have even Master Charge accounts at both Franklin and First National City?

MR. LENT: Only at Franklin, which we don't use.

Q This particular offer then is just a left over of your relationship with the First National City, is that it?

MR. LENT: I don't understand.

Q You say you no longer use Master Charge at First National City.

MR. LENT: Because the problem in itself is such a big problem that at their requests, as well as my

-10b-

own, we felt it would be better to discontinue the service.

Q So you're no longer connected with First National City but because of this back problem that occurred, you're in the process of liquidating those Master Charge items through National City?

MR. LENT: Right.

Q Now at Franklin, you still have Master Charge service. You could still process if you wanted to, new charges, correct?

MR. LENT: Correct.

Q At the Chase Manhattan, can you still process?

MR. LENT: No.

Q Can you still process new charges?

MR. LENT: No.

Q So then, your only relationship with Bank Americard at Chase Manhattan is to liquidate this backlog of charges, is that correct?

MR. LENT: Yes.

Q Do you still have Bank Americard privileges at National Bank of North America for processing new charges?

MR. LENT: No. We mutually agreed it would be stopped.

Q So you don't have any arrangements with any Bank Americard bank?

MR. LENT: No.

Q None of these charges are signed by the customer, is that correct?

MR. LENT: That's correct.

Q Does the bank usually require some authorization from you before it processes these?

MR. LENT: Normally, not. I think there's a floor limit established by the bank and merchants, whereas if a charge is beyond that floor limit, they request usual authorization; a charge against a customer's account. In other words, if a charge is beyond-- let's say, the established floor limit is \$40.00 between the merchant and the bank and they first establish--

Q You mean \$40.00 per item?

MR. LENT: Correct. If we had a charge for \$50.00, we call the bank up and get an authorization number from the bank. They would give the bank a number. If the customer's account was in order, if it's under the \$40.00 or \$30.00 limit, there's no authorization required on it.

Q Is there anything further you want to elaborate on.

MR. LENT: I'd like to tell you that if there's any agreement of any nature that you want us to go along with, we're perfectly willing to do this. I won't be able to do this today since I'm

A 60

-12b-

not represented by an attorney but at everybody's own convenience, when everybody can get together, I will cooperate with you.

MR. ROBERTS: I will adjourn this hearing subject to recall.

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HTJ

OFFICE OF THE ATTORNEY GENERAL  
DIVISION OF CONSUMER AFFAIRS

In the Matter of

WING - WING

CONSUMER AFFAIRS DIVISION  
New York, N.Y.

Per Order 10-1010  
Page

A M E C W M

ADMINISTRATIVE  
Hearing Officer

Re: WING - WING

Edmund S. Winger, Respondent,  
245 10th Ave.  
New York, N.Y.

Michael J. Winger, Respondent  
42 Randolph Street  
Camden, N.J.

Barbara Halpern Cohen  
Consumer Service, Inc.  
New York, N.Y.

A 62  
Conall

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HEARING OFFICER SCHWARTZ: This is a hearing in the matter of Foto Factory. It is being held pursuant to the charter of the City of New York, section 2203B on the Consumer Protection Law of 1969 chapter 64, title A of the Administrative Code of the City of New York.

Mr. Lent and Mr. Seminara are appearing pursuant to a subpoena issued on October 19, 1973, <sup>as opposed to come voluntarily, but did not come willingly</sup> and have come voluntarily pursuant to the subpoena.

It is the policy of the Department of Consumer Affairs to inform the witness of certain of his rights at the outset of the hearing. You have the right to be represented by Counsel. And I see that you have not brought Counsel with you, and I'd like you to each please state for the record whether or not you are willing to proceed without being represented by Counsel. Mr. Lent?

MR. LENT: Yes.

MS. SCHWARTZ: Mr. Seminara?

MR. SEMINARA: Yes.

MS. SCHWARTZ: A transcript may be made of this proceeding. You may purchase such a transcript from the Hearing Service for your own use. If you do

not choose to purchase one, you may examine the Department's copy, if it decides to purchase one.

At this point I will ask all those present to identify themselves, so that we may have a record of their voices. Please give me your name, address, and relationship to this hearing, and to the company.

After the introductions, the witness may make any introductory remarks which he has for the record. I'm Cheryl Schwartz, and I'm a lawyer with the Department of Consumer Affairs, and I am the Hearing Officer.

MS. CARLSON: I'm Barbara Halpurn Carlson, I'm a Consumer Specialist for the Department of Consumer Affairs.

MR. SEMINARA: I'm Dominick Seminara. I live at 245 Dolphin Drive, Hewlett Neck, and I'm President of Foto-Factory.

MR. LENT: I'm Michael Lent. I live at 42 Randolph Drive, Commack, N.Y. and I'm Secretary of Foto-Factory.

MS. SCHWARTZ: I'd like to swear each of you in, individually, since you'll both presumably be testifying. Mr. Lent, will you raise your right

hand please? Do you swear that the testimony about to give at this hearing, will be the whole truth and nothing but the truth?

MR. LENT: I do.

MS. SCHWARTZ: Mr. Seminara, right hand. Do you swear that the testimony about to give at this hearing, will be the whole truth and nothing but the truth?

MR. SEMINARA: I do.

MS. SCHWARTZ: At this point I will turn the hearing over to Ms. Carlson, who will ask questions to direct to the company.

MS. CARLSON: First, did you have any introductory remarks at all?

MR. SEMINARA: No.

MR. LENT: Nothing.

MS. CARLSON: And if for some reason you want to go off the record, all you have to do is say that. Mr. Seminara, you are President of Foto-Facory, is that correct?

MR. SEMINARA: Yes.

MS. CARLSON: And how long have you been with Foto-Facory?

MR. SEMINARA: Since it's inception, for almost two years.

MS. CARLSON: In what capacity?

MR. SEMINARA: Originally as Treasurer. I recently took over the Presidency.

MS. CARLSON: When did you take over the Presidency?

MR. SEMINARA: About two weeks ago.

MS. CARLSON: And who preceded you as President?

MR. SEMINARA: Mr. Steven Lent.

MS. CARLSON: Is Mr. Lent still with the corporation?

MR. SEMINARA: No.

MS. CARLSON: Could you give us the reason that you took over for Mr. Lent?

MR. SEMINARA: There were four partners; two partners interests were purchased by myself and Mr. Michael Lent.

MS. SCHWARTZ: Excuse me. You used the term "partners,"-----

MR. SEMINARA: It's corporation, there are four stockholders actually.

MS. SCHWARTZ: I just wanted to clarify

that.

MS. CARLSON: What is the exact corporate name of Foto-Factory?

MR. SEMINARA: Foto-Factory Ltd.

MS. CARLSON: And where is Foto-Factory located?

MR. SEMINARA: 240 Maple Ave., Rockville Center, L.I.

MS. CARLSON: Is that the only address you utilize?

MR. SEMINARA: No. We have a retail location at 350 Sunrise Highway, Lynbrook, L.I.

MS. CARLSON: Are there any others?

MR. SEMINARA: No.

MS. CARLSON: Do you have any Post Office box addresses?

MR. SEMINARA: Yes.

MS. CARLSON: Could you give us those please?

MR. SEMINARA: One is U.S. Box 1, Rockville Center, and I don't recall the number of the other.

MR. LENT: The other is P.O. Box 81, Rockville Center.

MS. CARLSON: Thank you. Mr. Lent, your

position is Secretary?

MR. LENT: Yes.

MS. CARLSON: How long have you been with Foto-Factory?

MR. LENT: From the inception.

MS. CARLSON: Have you always been the Secretary of that organization?

MR. LENT: Yes.

MS. CARLSON: Have there been any other addresses at which Foto-Factory has done business, or has been located?

MR. SEMINARA: Yes.

MS. CARLSON: What are those?

MR. SEMINARA: 373 Maple Ave., Westbury, L.I. and 2477 Long Beach Rd. Occanside. Let me clarify it, 373 Maple Ave. was a sales office and bookkeeping offices, and 2477 Long Beach Rd., Occanside, was the photo finishing laboratory. We moved from those two locations in June of this year to one location which is at 240, the present location, where we have the photo finishing laboratory and sales and bookkeeping offices.

MS. CARLSON: I see. Did you have any other

addresses in any other states?

MR. SEMINARA: In Delaware, yes. We have representation in Delaware.

MS. CARLSON: Where in Delaware?

MR. LENT: I think it's South State St. in Wilmington. I'm not sure of the exact number.

MS. SCHWARTZ: Are you incorporated in New York or Delaware?

MR. SEMINARA: In Delaware.

MS. SCHWARTZ: Have you filed a certificate of doing business in New York?

MR. LENT: Yes, I believe so.

MS. SCHWARTZ: In what Counties?

MR. LENT: I believe Nassau, I'm not sure. I'm pretty sure we filed, and the Counties I'm not sure.

MS. CARLSON: Are these the only addresses that you've given me, at which you've done business?

MR. SEMINARA: Yes.

MS. CARLSON: From inception of the corporation?

MR. SEMINARA: Yes.

MS. CARLSON: Have there been any offices in California?

MR. SEMINARA: Oh gee, I'm sorry, it slipped my mind. There was one on Woodmont Ave., in Van Nuys, California.

MS. CARLSON: Do you share facilities with any other businesses or organizations now?

MR. SEMINARA: No.

MS. CARLSON: Have you in the past?

MR. SEMINARA: No.

MS. CARLSON: Is Foto-Factory affiliated with any other corporations, either as a parent, or a subsidiary, or any other type of similar relationship?

MR. SEMINARA: No.

MR. LEHT: No.

MS. CARLSON: Do you have any business arrangements with any other companies, for example for photo finishing or something of that nature?

MR. SEMINARA: Yes.

MS. CARLSON: Could you give us the names of these companies, and the kind of relationship?

MR. SEMINARA: Are you referring to direct photo finishing, the different accounts we might have?

MS. CARLSON: Yes. Perhaps I better clarify

that. I was thinking in terms of companies with which you contract to do certain types of work for you, for example.

MR. SEMINARA: No, we don't have any contracts with anyone, with exception of, we have sales of photo finishing mailers, envelopes, to the consumer, and a couple of retail stores.

MS. CARLSON: You supply certain retail stores with the envelopes, the pre-paid mailers?

MR. SEMINARA: We sell them to them, yes.

MS. CARLSON: Do they have Foto-Factory's name on them?

MR. SEMINARA: For the purposes of wholesaling, we distinguish Foto-Factory to the consumer on the direct basis, and for wholesaling we use the name Foto-Mats.

MS. CARLSON: Foto-Mats; is the business of Foto-Mats also incorporated?

MR. SEMINARA: No, it's a trade name.

MS. CARLSON: And how many businesses do you do business with under the name of Foto-Mats? How many companies do you deal with when you are using the name Foto-Mats?

MR. SEMINARA: Two.

MS. CARLSON: Could you give us their names please?

MR. SEMINARA: One is Mail Order U.S.A., and the other would be Camera Hut, New Jersey.

MS. CARLSON: Mail Order U.S.A. is in New York?

MR. SEMINARA: Yes.

MS. CARLSON: Generally what is the purpose of your enterprise, Foto-Factory?

MR. SEMINARA: The outset of our enterprise was to sell to the consumer Kodak film with a developing mailer. This was the original establishment, and this is how we went about doing our business, by running different ads through different medias, such as magazines and newspapers, radio, television, and most of our sales came via the telephone or by mail. When we received the order by mail or by telephone, however the customer paid for it, sometimes they paid for it with their Master Charge or Bank Americard, or American Express, or they sent in a check or money order.

The order was then taken, whatever they were

ordering, was processed and their films were sent out, their Kodak film, with the developing mailer. When the customer is ready to send in that roll of film that they have taken with their camera, they send it in, into the lab, into our Post Office boxes. We had a daily pickup, two of them we still have. And the work is then taken and processed through our laboratory.

That was one way of doing business. The other way we sent out on a direct mail basis the various envelopes and literature, and trying to get a customer to do business with the Foto-Factory, in that they may buy film and processing as one package. So in effect, Foto-Factory is a direct outlet to buy film and processing at a reasonable price.

MS. CARLSON: You said you originally started with only Kodak film, are you still using only Kodak film?

MR. SEMINARA: We're using Kodak film and we're using Fuji film. We are selling the two. And at one time AGFA film.

MS. CARLSON: Does Foto-Factory engage in any activities outside that realm?

MR. SEMINARA: Yes, we've always-----I shouldn't say always have-----we recently had a transition in our business, where we're slowly eliminating all of our outstanding advertising, all the ads that we've had on the program of selling film and processing. And now we're in the business of processing only. And that is that we will solicit envelopes, developing envelopes that you may use or not use, send it into the Foto-Factory with whatever amount of money that is necessary to develop your film, we'll develop your film, and send you back developed pictures.

MS. CARLSON: So you're moving away from the entire supplying of film?

MR. SEMINARA: Right.

MS. CARLSON: Why is that?

MR. SEMINARA: One because of the headache and problems with the mail order problems that you generally run into, such as non-delivery from United Parcel Service, mail Post Office problems, wherein some part of the country it takes a little bit longer, supply in itself. That is, in effect, the supply versus the demand would be much greater profitability

wise, it's a lot more profitable to do business doing processing only, in having the customer go out and buy his own film.

MS. CARLSON: Okay. At this time why don't I start to ask for the subpoena items? Did you bring those with you?

MR. LENT: I had explained to Ms. Schwartz, being currently with this reorganization, I didn't have any of this material available. And she said, "Just bring what you can," and you would just ask the questions, and whatever we could supply, we would.

MS. CARLSON: Let me ask first for number one, original copies of the certificate of incorporation, and/or certificate of doing business for Foto-Factory, Ltd., herein after referred to as Foto-Factory.

MR. LENT: That I don't have with me.

MS. CARLSON: Is it in your possession?

MR. LENT: Yes, I think we can probably get it. It's, as I said before, incorporated in the state of Delaware.

MS. CARLSON: Do you have a copy of the certificate?

MR. LENT: Of the certificate of incorporation? I think so.

MR. CARLSON: At this time could I ask you to supply that at a later date, and would you at least do that?

MR. LEHR: Is that necessary?

MR. CARLSON: Well it was a subpoena item. And if you would agree to bring it, there should be no problem. If there's a problem of copying, we could make a copy and send it back with you.

MR. LEHR: Well being that we're without Counsel, before I commit anything on copies of anything, I'd like to talk to Counsel.

(Off the record discussion)

MR. SCHWARTZ: When is it that you expect to be completely in the processing of film?

MR. SEIMARA: Out of selling retail? You mean Kodak film with the processing? Hopefully within the next three to four months. We're winding down the business, in that we've stopped altogether the acceptance of any charge plates from the consumer. The only thing we're accepting right now are any orders that might come in for film and processing, which right now wouldn't amount to more than ten or fifteen orders a day. And one of the reasons why we're honoring

those orders, as there are some current publications that were prepared and are currently running, so we have to honor those.

MS. SCHWARTZ: Have you stopped your advertising for this?

MR. SEMINARA: Yes, we stopped it over than a month and a half ago.

MS. CARLSON: You said that now you're only getting about ten or fifteen of those a day; generally, how much were you getting per day?

MR. SEMINARA: Approximately 2000 a week.

MS. CARLSON: Let me ask now for subpoena item number two, original copies of records showing names, addresses and titles of all Foto-Factory officers.

MS. SCHWARTZ: Before we get to item number two, I would like to state that off the record, Mr. Lent and Mr. Seminara have agreed to give us a copy of the certificate of incorporation; is that correct?

MR. SEMINARA: Yes.

MS. CARLSON: Original copies of records showing names, addresses and titles of all Foto-Factory officers, stockholders, and employees since January 31, 1970.

MR. SEMINARA: We don't have that information

either. Anything relating to the stock records aren't present, because of the recent transition in the officers and directors of the corporation. And our attorney is now in the process of us filling in the minutes of the meetings and getting that prepared for us. So at a later date we might be able to give you that.

MS. SCHWARTZ: How soon do you expect that?

MR. SEMINARA: Hopefully within the next thirty days.

MS. SCHWARTZ: Well we would like both the former officers and stockholders and directors, and the present.

MR. SEMINARA: Do you want me to give you that on the record?

MS. SCHWARTZ: Yes, if you could just tell us the former officers.

MR. SEMINARA: The former officers from inception, to approximately a month ago were Stephen Lent, he was President, Nicholas Mascara, Executive Vice-President.

MS. SCHWARTZ: Is he still with the company?

MR. SEMINARA: No.

MS. SCHWARTZ: He left a note.

MR. SEMENARA: Yes.

MS. SCHWARTZ: Are either of  
stockholders?

MR. SEMENARA: The stock is  
order until they're satisfied as far as

MS. SCHWARTZ: I assume this  
held corporation?

MR. SEMENARA: I don't understand.

MS. SCHWARTZ: Not public. Or

MR. SEMENARA: Yes.

MS. SCHWARTZ: Closely held,  
publicly traded.

MR. CARLSON: For better or

MR. SEMENARA: For better or  
death do us part.

MS. CARLSON: Would you like  
the office?

MR. LENT: That's it.

MS. SCHWARTZ: There was no

MR. LENT: ~~I was secretary.~~

MS. CARLSON: You were president.

MR. LENT: And still am.

MS. SCHWARTZ: And who was the treasurer  
at that point?

MR. SEMINARA: Myself.

MS. SCHWARTZ: Were there any other officers?

MR. SEMINARA: No.

MS. SCHWARTZ: What about the directors?

MR. SEMINARA: Some.

MS. SCHWARTZ: Who was chairman of the board?

MR. SEMINARA: There was not a chairman  
of the board.

MS. SCHWARTZ: I'm curious about, why the  
reorganization. You mentioned something before but  
I really didn't understand it. Could you-----?

MR. SEMINARA: One of the basic reasons is that  
in the transition of our business in eliminating the  
film and processing concept, the transition would  
not allow enough revenues to be able to support  
four officers to start. And that would be the principal  
reason.

MS. SCHWARTZ: So there are going to be just  
two of you left?

MR. SEMINARA: That's correct.

MS. CARLSON: Do you expect with greater

revenues, the two to be rejoining the company?

MR. SEMINARA: No.

MS. SCHWARTZ: Who made business decisions?

MR. SEMINARA: The Board.

MS. SCHWARTZ: Jointly?

MR. SEMINARA: Jointly---well depending upon the decision that was to be made, how major or how minor.

MS. SCHWARTZ: What if there's a tie.

MR. SEMINARA: If there were a tie, we just fought it out, and somebody won.

MS. CARLSON: Who are the Board members?

MR. SEMINARA: The Board members are the same as the officers, same four.

MS. CARLSON: And now the Board members are?

MR. SEMINARA: Myself and Mr. Lent.

MS. CARLSON: What about the employees?

MR. SEMINARA: What about them?

MS. CARLSON: Item number two of the subpoena we asked for, the names, addresses and titles of the employees.

MR. SEMINARA: Again, another reason why the list isn't being supplied at this time is because, in

the transition, and in my assuming the presidency, and as a controlling interest in the company, most of the employees with the company have been laid off. I am now in the process of reorganizing, and I am rehiring new help, I have rehired new help. And I would say out of the original 25 or 30 people that were employed, there might be two or three people that we've retained. At this point I believe, we might have at the most 12 people working for Foto-lactory.

MS. SCHWARTZ: Besides you?

MR. SEMINARA: Yes.

MS. SCHWARTZ: Could you tell us the positions that people were employed at, besides secretary and clerk?

MR. SEMINARA: We had laboratory technicians. We had people that are skilled working in the laboratories, such as printers, strippers, people that are just educated to work machinery. And you have your normal bookkeeping staff, and we have a complaint department, which consisted of service, which we call a service department, which answers all incoming complaints regarding any lost or mixed up films that might have occurred in the normal course of business, or orders

that might not have been received by the consumer, or orders that might not have been shipped, or anything relating to refunds and stuff.

MS. SCHWARTZ: Who was in charge of filling the mail orders for film and processing envelopes?

MR. SEMINARA: Directly or indirectly?

MS. SCHWARTZ: For instance if I sent in a coupon ordering ten rolls of film, who-----

MR. SEMINARA: There's a normal process that your order would have gone through.

MS. CARLSON: Could we go through that?

MR. SEMINARA: Sure. The mail would come in, and it would go to our bookkeeping department, the bookkeeper would open in. In fact I would refrain from answering the question, I'd rather have Mr. Lent answer it because he's more familiar with it.

MR. LENT: It would come in, and would go in with the bookkeeping, be written up. It would be sent into the shipping department.

MS. CARLSON: When you say "written up"-----

MR. LENT: On a form.

MS. CARLSON: And it says the name of the person?

MR. LENT: The form would have the name and address of the person, what they were ordering. Then it would go to the shipping department, and a copy of the form would go into the box with the merchandise, and the postage or UPS symbols, whatever was necessary, would be put on it, and it would be shipped out. At one point, we also had this system being done by a computer, where the order would come in, and we would notate on the envelope what was enclosed, whether it would be a check or cash, or which, and then the computers would punch it out and they would print it, make thing, and would come back with half of it a shipping label, and half a like a little receipt, telling the customer what they were getting.

MS. SCHWARTZ: When did you discontinue use of the computer?

MR. SEMINARA: We haven't yet.

MR. LENT: We still use it on and off.

MS. SCHWARTZ: You said you used to use it.

MR. LENT: Well, "used to" being based on the film and processing. The volume is, as Mr. Seminara said, there isn't much volume of film, so there's no need for

it anymore.

MS. CARLSON: When did you begin using the computer?

MR. LENT: I'd say about a year ago.

MS. SCHWARTZ: Do you know the exact date of the corporation, when it was filed or when it was formed? Because you said before, you'd been with the company since it's inception, but we never got a date for it.

MR. LENT: Somewhere in May 1972, I think.

MS. CARLSON: Had all of the officers, or any of the officers had previous experience in film processing and ordering?

MR. LENT: Not in ordering, but each of us has been in the film business before, yes.

MS. CARLSON: At the same place?

MR. LENT: No.

MS. CARLSON: Could you tell us just generally, what your previous experience was?

MR. LENT: My previous experience was in retail stores, film business. And before that I worked for Montgomery Ward and J.C. Penney.

MS. CARLSON: And Mr. Seminara?

MR. SEMINARA: My background is with the photo finishing laboratory and also retail stores.

MS. CARLSON: Do you train your employees yourselves?

MR. SEMINARA: Sometimes, depending upon what division.

MS. CARLSON: What divisions do you train?

MR. SEMINARA: All. Depending upon what division, he would train some, I would train others.

MS. CARLSON: Okay, which divisions do you train?

MR. SEMINARA: I touch upon a little bit of the office as well as the laboratory.

MS. CARLSON: I see. And training, what does that involve?

MR. SEMINARA: It involves getting the new employee accustomed to working in a laboratory. And the laboratory being the key to our business, it would be getting one accustomed to working a machine, someone that maybe never has worked a machine would have to be trained in that capacity. As far as training and opening mail in that kind wouldn't be too difficult. That was something that came very easy.

MS. CARLSON: And Mr. Lent, what divisions do you train?

MR. LENT: A little bit of everything also. The training basically for clerical people is very simple. The operation has always been very simple. A lot of them are younger people and there is a constant turnover. And it really----there's no sophisticated program whatsoever, other than writing a name and address or something like that. It's very simple.

MS. SCHWARTZ: Who is in charge of the mail room and who is in charge of the lab? Who's responsible for the operations?

MR. SEMINARA: At the moment?

MS. SCHWARTZ: No, in the past----well both, at the moment and in the past.

MR. SEMINARA: At the moment I'm in charge of the laboratory, and in the past it was Nicholas Mascara.

MS. SCHWARTZ: And the mail room? Filling the orders as they come in.

MR. SEMINARA: Well in the past I was in charge of the mail.

MS. CARLSON: And now?

MR. SEMINARA: I am.

MS. CARLSON: You still are?

MR. LENT: There is no mail room.

MR. SEMINARA: It's down to a point where

now-----

MS. CARLSON: I'll ask for the next item which is number 3, records of fee schedules for various services provided to consumers at Foto-Factory. Do you have that with you?

MR. LENT: I have one of the old things I think.

MS. SCHWARTZ: Can you tell me what is the date you started accepting orders, both for processing and for film delivery and mailers?

MR. SEMINARA: Selling the film and processing?

MS. SCHWARTZ: Yes. And for processing the film itself.

MR. SEMINARA: Again, the concept of selling the film and processing, was the original concept that was used. And that was continued, through, I would say the summer of this year.

MS. SCHWARTZ: But when did you begin it?

MR. SENTINARA: That was from the inception.

MS. SCHWARTZ: From May, 1972?

MR. SENTINARA: From May, 1972.

MR. LENT: Last May. As far as the schedule, I have a copy of an ad, an old ad. And that basically represents all the prices we used to have and all the items we used to carry.

MS. CARLSON: We'll mark that as an Exhibit.

MS. SCHWARTZ: We'll mark this as Respondent's Exhibit A.

MS. CARLSON: How do most people pay for your service?

MR. LENT: Now?

MS. CARLSON: Yes, and in the past.

MR. LENT: In the past the majority I guess were checks. There was a combination of charges and checks. But I'd say the majority was probably checks.

MS. CARLSON: And now, has that changed?

MR. LENT: Now it's completely check.

MS. CARLSON: Could we go through briefly again what happens say, when someone sends, say who is in Brooklyn sends you a check, or calls you on the phone and says, ----in this case now it's just processing, but

in the past it would have been info. Then there's no letter to go to the mail room or whatever. How is that information relayed?

MR. LEWIS: You mean when we used to take phone orders?

MS. CARLSON: Yes.

MR. LEWIS: That was on a form.

MS. CARLSON: There was a form?

MR. LEWIS: Yes, there was a form that would be transcribed to the order thing I told you about, that gets in, and that was it.

MS. CARLSON: Would you be able to send us a copy of that form?

MR. LEWIS: A copy of an order form?

MS. CARLSON: Yes, that you take over the phone.

MR. LEWIS: I don't know if we have any more of those because we discontinued that one about four or five months ago.

MR. SEMINARA: We've cleaned up the offices and throw a lot of paper out, and whatnot. We might have one or two laying around.

MS. CARLSON: You no longer take orders

over the phone?

MR. LENT: We haven't for about four, five months, at this point.

MR. SEMINARA: That was for film and processing?

MS. CARLSON: For either.

MR. SEMINARA: It's been more than thirty days, to be safe, it could have been a month or two months.

MS. CARLSON: Okay, now when you did do it over the phone, did people charge it only, or was there another way of paying over the phone?

MR. LENT: No, it was primarily charge.

MS. CARLSON: Primarily charge? It was not all charge?

MR. LENT: There were a few C.O.D's involved, but the majority of it was charge.

MS. CARLSON: When they called on the phone, then they would give their number to you over the phone?

MR. LENT: Right.

MS. CARLSON: And then you would just write that number on a Master Charge form?

MR. LENT: Right.

MS. CARLSON: Was there ever any signature involved?

MR. LENT: It was marked "phone order."

MS. CARLSON: Were those kept separately from the others?

MR. LENT: No.

MS. CARLSON: So that all the Master Charge slips both unsigned and signed went to the same place?

MR. LENT: Basically yes, I think.

MS. CARLSON: Did you keep records so that you knew all the people who had ever ordered from you?

MR. LENT: Some records, yes.

MS. CARLSON: And in those records was it indicated how they had ordered from you?

MR. LENT: In some files yes. Some of the computer stuff would say whether it was a check order or a Master Charge order, or what it was. And if it was a Master Charge it had its number, because that was printed on the form, so that the customer knows what it was.

MS. CARLSON: And in the records was it listed

if it was a Master Charge order over the

MR. LENT: I don't think so.

MS. CARLSON: As far as possible, we did you ask over the phone exactly what they wished, and then bill them according

MR. LENT: No, at one time we had a lot of confusion with postage and we changed it and said, based on the price, if it was up to \$20.00, we had a set price; if it was over \$20.00 there was a set price. We just had two things. The original was confusing and customers were upset, and it didn't work out.

MS. CARLSON: What was the problem?

MR. LENT: There was a flat rate order, and then there was a special order. It meant we would rush it out faster than the flat rate. But that didn't work out because people would call in and say they want special rush and we'd send the money in, and we'd send the package and the package would come back. It just created confusion, and too many problems for

MS. CARLSON: In the second

there a certain fee for first class, second class, third class, fourth class?

MR. LINT: No, on the shipping of an order it was just a flat two things. Up to \$20.00, so much and over \$20.00.

MS. SCHWARTZ: Does the rush order mean Special Delivery mail?

MR. LINT: There was a Special Delivery charge if someone wanted it, yes. But the rush order was a priority order internally.

MS. SCHWARTZ: Oh, it didn't mean special delivery mail?

MR. LINT: No.

MS. CARLSON: That rush order, did it get----- exactly how was that rushed?

MR. LINT: It would sit in the front of the pile that would come out of the order room. This was something that we weren't familiar with, and everybody else in the mail order business seemed to have been doing it that way, so it's something we picked on to do, and it just didn't work out for us, it created too many problems.

MS. CARLSON: Have you ever had a problem with

customers being confused as to whether prices included film and processing, or just processing, or just film?

MR. LENT: Yes.

MS. CARLSON: How frequently was that a problem?

MR. LENT: I guess at the beginning very frequent.

MS. CARLSON: How was that abated?

MR. LENT: Experience.

MS. CARLSON: What do you think the confusion was the result of?

MR. LENT: The confusion occurred, initially when we started advertising we started film with processing. Originally we tried many different titles, how to explain it to the customer so they would understand they would get both film and processing. And I guess along about three or four months after we started doing business, another firm came in and started to advertise. And their first name was Foto.

MS. CARLSON: What was their second name?

MR. LENT: Mill. And they advertised exactly the way we did, only their prices were just for processing. So then our people started to get confused

because they thought Foto-Mill was us. And this too was one of the decisions that led to just stopping it.

MS. CARLSON: At any time have your prices ever been for just film, or just processing?

MR. LENT: Not until recently, when it's been primarily just processing.

MS. CARLSON: How recently?

MR. SEMINARA: I would say within the last thirty days, the transition of not selling film with processing, but selling just the processing.

MS. CARLSON: Do you anticipate any problems from people who formerly have bought film and processing from you, and now are only getting processing? Do you anticipate any problems there?

MR. LENT: They don't get that. As he said, with the few orders we're getting, most of them are repeat customers, who have been doing business with us. And we will continue that. But instead of sending them any material with which they can order again, under the new system we'll send them just a plain envelope with checking process only.

MS. SCHWARTZ: The prices listed in your ads,

are those list prices, above or below list price?

MR. LENT: That's below list price.

MS. CARLSON: You just said this, but I'm going to ask you again because I didn't catch it. How much for below \$20.00 is the postage charge?

MR. LENT: I think it was, when we were doing it, it was \$1.00 up to \$20.00, and \$1.50 over \$20.00.

MS. SCHWARTZ: This ad says \$1.00 for under \$20.00, and \$2.00 for over.

MR. LENT: Then that's what it was, \$1.00 up to \$20.00 and \$2.00 over \$20.00.

MS. SCHWARTZ: There's also a notation at the bottom which says, "First class return postage and handling 50¢."

MR. LENT: Right.

MS. SCHWARTZ: Can you explain that? Is that in addition to the-----

MR. LENT: Yes, that's why it's there. When we originally started the program----say, in this case the customer would send us \$1.99, they'd get a roll of film and this prepaid mailer. And to get this back first class there was a form, or actually it was a

welcome letter to Foto-Factory in the package. And it explained who we were, what they were getting, and also said they had an option to either enclose 50¢ for first class, to get the film back first class, or nothing and they would get it back third class. Now, that created confusion again, and it also created problems for us. So we just stopped it completely, and we just charged an additional 50¢ for first class return. So that all the mail that comes in with the 50¢ gets returned via first class mail, and if it doesn't have 50¢ it gets third class mail.

MS. SCHWARTZ: Wouldn't it cost about 16¢ or 32¢ to mail back all the film? Why is it 50¢?

MR. LENT: The film will average anywhere from 16¢ to 48¢ depending upon the exposures.

MS. SCHWARTZ: Okay, then what's the difference? Do you have to send 50¢ for each envelope?

MR. LENT: Yes.

MS. SCHWARTZ: How many rolls can you fit into that envelope, maximum?

MR. LENT: Each envelope is for one roll of film.

MS. SCHWARTZ: And you send 50¢ for each?  
So that would be 8¢?

MR. LENT: No.

MS. SCHWARTZ: 16¢?

MR. SEMINARA: The original concept of selling film and processing, at for instance, example, instamatic film, color film, a 12 exposure roll of film was being sold with the processing for \$1.99. We in anticipation of the deluge of orders that we were going to get, knew that the price was low enough to be, and attractive enough to be able to do a tremendous volume of business. The volume that we anticipated, that we are still getting, requires a handling, an extra type of handling which normally a photo finishing laboratory doesn't expose itself to. The handling of getting it out fast and rushing it out. Because we're selling a 12 exposure roll of film which normally in a discount store costs about \$1.00--- you can buy it anywheres from 89¢, 99¢, \$1.09, \$1.19, for the film alone. To process that roll of film, the list price on that is \$4.90.

Now, we talk list price because if you went to a Drug store, they would charge you list price \$4.90

to develop the role of film. So in effect you're getting \$4.90 plus \$1.00 for the film. It's roughly \$6.00 of value for \$1.99. If we were to sell the film at a price, let's say a higher price of \$3.99 or \$2.99 we probably would do business, but not as much. It wouldn't require the extra handling, as we would require here because the volume wouldn't be there.

MS. CARLSON: So in effect, the extra money for the postage is really for handling?

MR. SEMINARA: It's for postage and handling. It's a combination of both.

MS. SCHWARTZ: I still don't understand what you mean by handling. I know it's a trade term.

MR. SEMINARA: We have to open this envelope, take the film out, there's an extra step that we go through which is inserting a reorder form and other types of things that have to go back to the customer.

MS. SCHWARTZ: So it's essentially the difference is to pay the cost of labor for stuffing and opening up envelopes?

MR. LENT: No. The difference is to pay a combination of the cost of our handling plus the

postage. You see, 16¢ covers only the smallest amount of film we get, which is a 12 exposure roll. The majority are 20 and 36's, and chrome, slides and movies. These go anywhere, as I said, from 16¢ up to 48¢.

MR. SEMINARA: It all depends on the weight of the package.

MS. SCHWARTZ: I understand that, even granting the 48¢, I'm just trying to find out what the other 2¢ is for. And that's the cost for the little thing you insert, the reorder form?-----and to pay the man who opens up the stuff?

MR. LENT: As he's saying, it's a handling charge for us to handle the mail. Okay, if you want to interpret it directly, it's also a hedging on our part because of the mail rates, 50¢ is a round figure. Sometimes it is anticipated that the rates will go up. And we had a lot of these printed.

MR. SEMINARA: When we print these, we print these in hundreds of thousands. It's very costly. Now there happens to be a postage increase that's going to take effect January 1 of this year, this coming year. We had to anticipate that.

MS. SCHWARTZ: The extra 2¢ to 3¢ then, is just a profit?

MR. SEMINARA: No, it's a handling charge.

MR. LEHT: We seem to want to interpret it as a profit, it is also a matter-----

MS. SCHWARTZ: No, I don't want to interpret it as a profit. I first asked you if it's to cover the cost of the reorder form and the labor, and you said "no."

MR. LEHT: It's a primary charge of 1) postage, 2) handling for us to mail it, and 3) the fact that it's very difficult to have each customer to send 48¢, or 24¢, or 36¢.

MS. SCHWARTZ: Okay, but I just don't understand what the handling includes.

MR. LEHT: The handling includes taking the film in, opening it, labeling it, then at the end taking it off, putting it in a separate mail bag and mailing it.

MS. SCHWARTZ: Okay, that's the labor. That's the cost of your labor, isn't it, essentially?

MR. LEHT: No. We figure the cost of our labor is a little higher than that.

MS. SCHWARTZ: But it goes towards paying that?

MR. SEMINARA: It's stated on the mailer, by the way.

MS. SCHWARTZ: I'm just trying to get a definition of handling. If it says postage and handling, I just want to know what it covers.

MR. SEMINARA: We try to follow what the industry does. And most, in fact, I don't know of any that don't use the terminology of postage and handling.

MS. SCHWARTZ: I know the industry does that, I'm just trying to find out-----

MR. SEMINARA: I don't want to set a precedent here as to what is handling and what is postage.

MS. SCHWARTZ: Well I just wanted to know what you meant by it. Because I know it's a very common term, and I just wanted to understand what it was. And also since you now charge, or did charge 50¢ for each roll, so that would mean that the price for a single pack-----the first line of this advertisement, which is "one roll of Kodak color film with

of promotional material and advertising, and each type of mailer used.

MR. LENT: I've got basically the two mailers. And the only thing that would change on this would be whether it's a 12 exposure roll or a 20, or a 36. But these are basically the two mailers. The advertising, the format generally, was like you have it there. Anything else we put out was that format.

MS. CARLSON: Is the Van Nuys, California, is that still operative, that office?

MR. LENT: No, we closed that.

MS. CARLSON: When did that office close?

MR. LENT: June.

MS. CARLSON: This last June. And other advertising? I noticed some over there.

MR. LENT: They're all basically the same thing with different headlines. We have "The Great Film Robbery."

MS. CARLSON: Yes.

MS. SCHWARTZ: Before we go on to that, I'll just mark the two processing envelopes as Respondent's Exhibits B and C.

MS. CARLSON: If necessary, we can make copies and return those things if you want them back.

MR. LENT: Most of the ads were the same, weren't they?

MR. SEMINARA: Basically.

MS. CARLSON: We would like to look over those. Would you like these returned?

MR. SEMINARA: I think I pulled them out of the wrong file. They may have been pulled out of our permanent record files. I'm not really sure. You can make copies of them.

MS. CARLSON: What publications have you utilized in the past, in advertising?

MR. SEMINARA: We've used the N.Y. Times, N.Y. Post, Popular Photography, Modern Photography, Carte Blanche, American Legion, Elks, Moose Magazine. I would say over 100 other type newspapers across the country, and other type of magazines.

MS. CARLSON: Did you bring any copies of any of those with you today?

MR. SEMINARA: No.

MR. LENT: They're all basically the same of what you have there.

MR. SEMINARA: Playboy, and a few others, plus we've been on radio, Long John Nebel's show and Bob Grant show, all the different announcers, and we've had our own video tape cut which was on channel 9. We sponsored the race track, the off track thing on channel 9.

MS. CARLSON: Would it be possible for you to make a list of the various places that you have advertised?

MR. SEMINARA: Sure.

MS. SCHWARTZ: Do you have a copy of the fee schedule which you have used in the past and are going to be using for processing only with no film?

MR. SEMINARA: Yes.

MS. SCHWARTZ: And this has been the one schedule you've used all along?

MR. SEMINARA: That's the one we're just starting to use now.

MS. SCHWARTZ: The new schedule will be entered as Exhibit D, Respondent's Exhibit D. And how does this differ from the schedule used in the past?

MR. SEMINARA: This in fact is an exact, almost an exact duplicate to one of our major competitors,

by the name of Beacon Photo, also known as Value Photo. And they're a substantial business. I believe their volume is in excess of 150,000 a year. And this concept is strictly 99% processing only. That if you send in film you'll send a check or money order for the amount and your film will be processed and returned. If it didn't all come out, a credit will be given for the undeveloped pictures. If you want a schedule of film, there is a schedule listed on the back of the envelope, and there's also a price schedule.

MS. SCHWARTZ: Now in the past, when you did just processing, did you do any other business? Did you only do film plus processing?

MR. SEMINARA: Film and processing.

MS. CARLSON: Are you advertising?

MR. SEMINARA: In what respect? As to what? Processing only?

MS. CARLSON: Well either way.

MR. SEMINARA: Yes.

MS. CARLSON: Where are you doing the processing only?

MR. SEMINARA: That particular

would be in Redbook; I can get you the rest of the names. There's a few magazines, that I-----

MS. CARLSON: So you agree to supply us with the list of those present advertisements?

MR. SEMINARA: Sure.

MR. SEMINARA: Those ads are basically---- this is what they look like. That's an introductory 99¢ offer to develop your film. If it's 12 exposure for 99¢ and if it's 20 exposures I believe it's \$2.50. And it's strictly an introductory offer to more or less get the customer into the Foto Factory fold. When they send in that film with their check or money order, they're bounced back with a green envelope, which is our normal schedule envelope. This is the normal way of doing business in the photo finishing business, and this is the way, let's say, you buy a customer.

MS. CARLSON: Where does this advertisement appear?

MR. SEMINARA: That appears in several magazines and newspapers.

MS. SCHWARTZ: This will be entered as Respondent's Exhibit E.

MS. CARLSON: Do you employ the services of an advertising agency?

MR. SEMINARA: Yes.

MS. CARLSON: And what is the name of that agency?

MR. SEMINARA: No longer. You mean in the past?

MS. CARLSON: Or in the past, you have. What was the name of that agency?

MR. SEMINARA: Forbes advertising.

MS. CARLSON: Presently do you employ the services of an advertising agency?

MR. SEMINARA: No.

MS. SCHWARTZ: When did you stop using an ad agency?

MR. SEMINARA: About the time that we decided to have the transition of the business, which was in the last 30 to 60 days.

MS. SCHWARTZ: And did you use the same ad agency since the beginning of the business?

MR. SEMINARA: No.

MS. SCHWARTZ: Can you give us the dates?

MR. SEMINARA: We used a smaller type agency

by the name of John John's Group for approximately two to three months at the inception of our business, and then we changed over to Forbes Advertising.

MS. CARLSON: In the past you've advertised phone numbers when you were using phone ordering. Are you still receiving phone orders at all?

MR. SEMINARA: No, we've disconnected the phones, phone order phones.

MR. LENT: There were separate phones for the phone orders, and that's been discontinued.

MS. CARLSON: When did you disconnect those?

MR. LENT: That's about three, four, months now.

MS. CARLSON: Do you remember the number?

MR. LENT: 678-4422.

MS. CARLSON: Presently do you have other phones that are in good working order?

MR. SEMINARA: Yes.

MS. CARLSON: Do you receive complaints by that phone?

MR. LENT: Yes.

MS. CARLSON: Speaking of complaints, number five on the subpoena item is records of complaints,

requests for refunds received, and records indicating refunds paid by Foto Factory. Do you have those with you?

MR. LENT: That I don't. We weren't in the habit of keeping all records after they were considered dead files. Anybody who got a refund we considered really wasn't a customer who'd come back to us, so I don't know what I have on that. But that we'll look for.

MS. CARLSON: Generally speaking, in the past when you had the volume of business----what did you say that was, per week?

MR. SEMINARA: About 2000 orders a week.

MS. CARLSON: 2000 a week. About how many complaints did you receive a week, of those 2000?

MR. SEMINARA: Well at the beginning there were hardly any. I would say for the first 8 months of operations, I would say the complaints were maybe less than 10 a week, maybe less than 5. I don't really know the exact number. It began to increase as we started to wind down the affairs of that concept of the business.

MS. CARLSON: And when it began to increase,

how much were you getting per week, say it's greatest?

MR. SEMINARA: Fifteen hundred a week.

MS. CARLSON: What kind of complaints were these?

MR. LENT: Mainly non-shipment or lost orders.

MS. CARLSON: What was the problem there? Were most of these valid complaints?

MR. LENT: In some cases yes, and some cases no. It would depend on each individual complaint.

MS. CARLSON: Well just generally, how would you characterize?

MR. LENT: Well we had one group of complaints which centered on non delivery of a particular film item, which happened just about the time there was a devaluation. We used to import a particular type of film. And then there was a devaluation and then all of a sudden it was no longer available. And we ran out of the supply we had and we couldn't get the supply back again, so there were complaints involving that.

MS. CARLSON: Did you notify your customers of this problem?

MR. LENT: Yes, we notified and-----

MS. CARLSON: How did you notify them?

MR. LENT: I think there was a mimeographed letter that was sent out to anyone involved.

MS. CARLSON: Do you have a copy of that?

MR. LENT: That I don't.

MS. CARLSON: Will you supply us with one?  
What percent of your complaints come over the phone, do you know? How many complaints a week do you receive over the phone?

MR. LENT: It's hard to say because the film business per se, it's the type of business that if you lose a roll of film, or if it's delayed, or if a picture doesn't come out, or something like this, people write in and they call. And these things continually occur.

MS. CARLSON: You mean the same person keeps calling?

MR. LENT: No, different people. Because you're dealing in the mails, and there are things that do happen. And people with pictures, more so than with anything else, get very upset. It always seems that the pictures are an untold value and can't be replaced that things

like this.

MS. CARLSON: I was curious as to how many complaints you received by phone, how many by mail, do you receive complaints in person?

MR. LENT: I really couldn't say.

MS. CARLSON: Do you receive complaints in person?

MR. LENT: Yes.

MS. SCHWARTZ: Can you estimate approximately how much of your business is with New York City residents?

MR. LENT: It's hard to say. I don't know.

MS. SCHWARTZ: Well a ballpark figure is all right if you just approximate.

MR. SEMINARA: It's very difficult. We've accumulated more than a million names in a very short period of time that we're in business.

MR. LENT: It's a hard figure to determine.

MS. SCHWARTZ: Can you estimate out of that percentage, what amount would come from, I would guess the busiest boroughs, Manhattan and Brooklyn? First Manhattan, do you have any idea?

MR. SEMINARA: I'd say Brooklyn is busier. The response is greater I think, out of Brooklyn.

MS. SCHWARTZ: Are most of your customers from Brooklyn? Would you say the greatest single group would be from Brooklyn?

MR. SEMINARA: Between two boroughs?

MS. SCHWARTZ: No, total.

MR. LENT: No.

MS. SCHWARTZ: Where are most of your customers from?

MR. SEMINARA: All over. It's so spread out.

MS. SCHWARTZ: All over the country?

MR. SEMINARA: All over the country.

MS. CARLSON: When you were talking about the number of complaints you had, do you consider this a normal amount of complaints?

MR. LENT: One of the reasons we got out of the business of film and processing is the complaints and the normal things that happen with this thing, were hurting us. Whether it's normal or abnormal, I don't know, because I don't know what other people experience.

MS. CARLSON: What is your policy with dealing dissatisfied customers? Say this person from Brooklyn

calls and says, "I ordered film, I called you or I wrote you, and nothing's happened and you cashed my check already."

MR. LENT: Well we try and satisfy them the best we can.

MS. CARLSON: Could you be specific. Like do you go to the room and look up their name?

MR. LENT: If we can, and if we still maintain the order, we try to look up and see what happened.

MS. CARLSON: What do you mean, if you still maintain the order?

MR. LENT: Well we don't have records from all the way back on hand completely. And most people who call want an immediate answer.

MS. CARLSON: Oh, you have those someplace else?

MR. LENT: No, in some cases we don't have them any more.

MS. CARLSON: What happened to them?

MR. LENT: Well we used to assume that if nothing came back within, I'd say a two or three month period, everything was okay. We had a few instances where people would call up two or three months later and say, "I didn't get it," and it was pretty hard

to find out if it was. But if it was a normal thing and we knew it was shipped, we'd tell them when it was shipped. If it wasn't shipped for some reason, or it was misplaced or something, we would get it shipped, and we'd take each one, one at a time.

MS. SCHWARTZ: You did keep records of the date that the orders were shipped out?

MR. LENT: In some cases, yes.

MS. SCHWARTZ: In what cases did you not keep records?

MR. LENT: In any business it depends on the rush. As I said before, we had a lot of turnover in people, and we were trying to be as efficient as possible, but a lot of times it didn't happen.

MS. SCHWARTZ: If someone complained, and your records indicated that the order had been mailed out, did you put a tracer on it with the Post Office, or try to investigate the possible mishandling by the Post Office at all?

MR. LENT: We tried that, but it doesn't always work, because the tracer system is such that the Post Office goes to the person and said, "Did you get it?" And they said they hadn't.

MS. SCHWARTZ: How many times did you try that system before you decided it didn't work?

MR. LENT: Well it happens to be the only system available, and it's still what we use.

MS. SCHWARTZ: Oh, you still use it?

MS. CARLSON: Who do you contact?

MR. LENT: We'll send a tracer form. They have regular forms. We do the same with UPS. There is no other way to do it as far as we know.

MS. CARLSON: What would you say are the percentage of complaints that are resolved?

MR. LENT: I'd say 80%, 90%. There are always people that we are not going to be able to resolve.

MS. SCHWARTZ: What would be the reasons that you couldn't resolve them?

MR. LENT: Either we didn't have a record of shipping the order, or we didn't have a record of receiving the order, or we knew the film was sent out, we didn't get it back, or we knew the pictures were sent out, or we didn't get it back, or we developed the pictures to the best of our ability, and people didn't think it was the best of our ability.

MS. CARLSON: Did this happen more with

ordering film, undeveloped film, or more with pictures that had been developed and were sent to you for processing?

MR. LENT: It was a combination of the two.

MS. CARLSON: Which would it happen with more, do you know?

MR. LENT: I would say it was equal.

MS. CARLSON: When you said 90% resolved, how were they resolved?

MR. LENT: Either the order is replaced, or it's found, or the pictures are found, or a refund is issued.

MS. CARLSON: Do you keep a list of complaints that are unresolved, or of dissatisfied customers, or anything of that sort?

MR. LENT: Not a listing, as they come in we just try and resolve them as best we can.

MS. CARLSON: And if a refund is in order, how soon after a refund is decided upon, are consumer's told that he will receive a refund, is that refund actually made?

MR. LENT: I'd say the maximum is about five to ten days.

MS. CARLSON: The maximum is five to ten days? Has it ever been longer than that?

MR. LENT: In some cases.

MS. CARLSON: How long has it been?

MR. LENT: It would depend on the individual case.

MS. CARLSON: Could you give me an utter, utter maximum?

MR. SEMINARA: Well it might have some occasions where it could end up in a month, or two months, or three months. It depends upon the type of complaint and what's involved. Because if we have a record of having shipped the merchandise, it takes that long from the time the customer requests a refund for us to satisfy our records, that he hasn't received the shipment. We send out a tracer, by the time the Post Office comes back, gives us an answer, it's quite intricate because we don't want to lose money on it, if we can help it. We wait for certain packages to come back undelivered. We find a lot of packages are rifled in the mails, a lot of packages are lost in the mails.

MS. CARLSON: When you receive film, what is

the maximum time it takes from the time you receive it to the time that it's developed and sent back?

MR. SEMINARA: Normally it takes 72 hours in the lab.

MS. CARLSON: What is the maximum it could take?

MR. SEMINARA: Recently we've had a change over of chemistry, in the introduction of the pocket system has brought about a complete change over in the chemistry of color processing. And that change over created delays on all photo finishers.

MS. CARLSON: What kind of delays, how long? Six weeks?

MR. SEMINARA: At least.

MS. CARLSON: Did you notify customers that there would be this delay?

MR. LENT: We tried to do it when business was the slowest, which was the last couple of months.

MS. CARLSON: How is that done? When it comes into you immediately send them out?

MR. SEMINARA: Well it's like this actually, we'll get in the new pocket film for instance, and that capacity of the machine-----the normal thing to do is

to splice one customer's roll with another customer's roll and so forth and so on. There are machines that cost \$14,000 to pre-splice that work, and there are machines that cost \$2,000 to pre-splice that work. That's depending upon the finances of the company, which machine they want. The one that cost \$2,500 can splice 200 rolls an hour. The one that costs \$14,000 can splice 2000 rolls an hour. And we try to go as fast as the machines can go. And not only that, but when you have an employee working on that machine there, that's not in full operation----- when you say 200 rolls an hour theoretically, the person who's standing at the machine, eight hours a day, it's two hundred rolls an hour. But then the mind wanders, and you think of this and that. The actual capacity drops down to about 150 rolls per hour. The machines are geared to do so many rolls per hour, again, this is one of the reasons why it's better to see what goes on behind the scenes.

MS. CARLSON: Right, but getting back to what I started out with, are all people notified if it's going to be over say, six weeks?

MR. SEMINARA: No, but what we do is print

up a delay notice that goes along when we do finally send the pictures out.

MS. CARLSON: So they don't know the pictures are going to be late?

MR. SEMINARA: No. There's no way.

MS. CARLSON: Does that strike you as a problem?

MR. SEMINARA: No. It's a problem in that it's an evil of the business, and it's an accepted evil. In any service business and in any service organization, you run into that type of problem.

MS. SCHWARTZ: Well we would like to give you a copy of Regulation 8 under the Consumer Protection Law, which deals with mail orders. And it specifies what procedure is to be used if an order is going to take more than six weeks. Are you aware of this regulation?

MR. LENT: What does it say?

MS. SCHWARTZ: Well I won't bother to read it because it's fairly long, but the essence of it, is that if you cannot fill an order within six weeks, then you must notify the customer and give them the option of cancelling or reordering or telling them

how much longer it's going to be.

MR. SEMINARA: I was talking about processing pictures.

MR. LENT: When he said six weeks, this wouldn't affect too many people. It was centered on one type of film or something.

MS. SCHWARTZ: But I would like you to have a copy of this regulation. Were you aware of it prior to today?

MR. SEMINARA: No.

MS. SCHWARTZ: Then you are now on notice of the procedure that is expected for New York City.

MS. CARLSON: Have you met with any other law enforcement agencies or business agencies to discuss complaints you've had recently?

MR. SEMINARA: Yes.

MS. CARLSON: And what are those agencies?

MR. SEMINARA: Federal Trade Commission, Attorney General's Office, Consumer Affairs of Nassau County. ✓

MS. CARLSON: Could you explain-----we have had complaints about certain charges that were made on people's credit cards, charge accounts. Could you

explain exactly what happened here?

MS. SCHWARTZ: Well basically what it is, is they said they charged one order and a couple of months later they got another bill for an order which they didn't make.

MR. SEMINARA: This was relative to an introductory offer?

MS. CARLSON: Yes.

MR. SEMINARA: Recently we had a promotion, I would say about a month ago, a month and a half ago, and we ran a promotion on radio, this was one of the <sup>NO</sup> ~~newspaper~~ last promotions that was run on the old Foto-Factory concept. And we were actually deluged with orders, and we turned it into a computer tape. The tape came back with a print out of customers. What we did was, we shipped out -----this is what an introductory offer looked like. It was four prepaid envelopes, which has a value of \$22.10. The value meaning that, you may send in your roll of 12 exposure film, any 12 exposure film, get it processed free of charge. When I say free of charge, in that it's already prepaid when you pay for it. 20 exposure, there were two envelopes, and then there was one for super 8. This

was the value of \$22.10 was being offered for \$9.95.

MS. SCHWARTZ: Can we keep this also, and enter it as an Exhibit?

MR. SEMINARA: Sure.

MS. CARLSON: These went to customers who had formerly ordered film from you?

MR. SEMINARA: No----well, as it turned out yes, but not because of our doing, but because----

MS. CARLSON: It was not your intention?

MR. SEMINARA: Our intention was, to ship people that had ordered it, and in effect a mix-up of computer tapes occurred and a print out of older customers, or people that were on our records before, were shipped an introductory offer, while ----and the whole thing was mixed with customers that ordered it. Now, what we've done, we made a printout of those people; we don't know how many people-----everyone was shipped. We don't know how many of those people had got this introductory offer were people that weren't supposed to get it. So what we did was, we made a print out, a computer print out of all of the people, and we're in the process now of sending them this letter, which was prepared by a bank; they're cooperat-

✓  
copy  
How  
many

ing with us to try and get it straightend'out.

MS. SCHWARTZ: Respondent's Exhibit F will be the offer which was mailed. And respondent's Exhibit G will be the letter that you've just sent with the bank.

MR. SEMINARA: This is the letter that is being sent to the same consumer that received the introductory offer. Whether he ordered it, or whether he didn't order it, the letter explains what he should do in either event. And we're getting full cooperation. This is why we've recently been deluged with complaints; that's one of the reasons.

MS. SCHWARTZ: What charge accounts do you accept?

MR. SEMINARA: None at the moment.

MS. SCHWARTZ: None at the moment, but you did formerly accept charges on American Express, Master Charge, and Bank Americard, is that correct?

MR. SEMINARA: Right.

MS. CARLSON: Did you also accept Diners Club?

MR. SEMINARA: Yes.

MS. SCHWARTZ: Do you have an account number, so that when somebody gives you their account, you send

in the order to Master Charge, and your account is credited? Is that how it works?

MR. SEMINARA: The way it works is, the customer gives us his account number, the name and address and when his card expires. His card----- not his card, but a slip is written out which is a debit slip, sent to the bank and is credited to our bank account, and it's charged to his account.

MS. SCHWARTZ: Where do you have bank accounts?

MR. SEMINARA: We have several bank accounts, because of the bank that we have, we still maintain a relationship in that we have to straighten out this problem.

MS. CARLSON: Okay, number seven is the bank name, address and account for each bank account held by Foto Factory in the subpoena. Do you have those here? You agree to present those? Did you also bring copies of records, books, ledgers, profit and loss statements?

MR. LENT: No we didn't.

MS. CARLSON: That we will agree to bring too?

MS. SCHWARTZ: Or at least let us examine

them when we visit, if necessary.

MR. SEMINARA: Sure. That would be a lot better, because we'd need a truck to bring all the stuff.

MS. SCHWARTZ: Did you say that you had a million names of customers?

MR. SEMINARA: We have on tape under a million at this point. There might be more at this point, I don't know. We've never checked it.

MS. CARLSON: How many introductory offers were sent out, total?

MR. SEMINARA: The maximum it could have been was about 11,000. Now we've advertised in like over 300 radio stations throughout the midwest.

MR. LENT: It should be pointed out that that maximum, that not all the people were charged.

MR. SEMINARA: Right.

MR. LENT: Because when the error was found, there were no more charges. But a lot of the orders were shipped. In fact all the orders were shipped, but not all the orders were charged.

MR. SEMINARA: The most important thing here is that we're trying to get back with this letter

the photo finishing mailers that the people were sent. What is happening is that the customer is calling us back saying, "I didn't order this, I don't want it, and I never ordered it." And so he'll go to his bank, the bank will charge our bank account. So we'll credit their \$9.95. Meanwhile they're not sending back the mailers. Those mailers have a \$22.00 value. And so we're getting bags and bags and bags of film to be developed that wasn't really paid for. This is the problem that we're facing.

MS. CARLSON: At this point, how many people have unresolved complaints as to nondelivery or have delayed delivery of either original film orders or of developed film?

MR. SEMINARA: Segregate it. There might be film and processing orders in the house now that we're filling. I would say roughly we'd estimate about 250 to 300 orders now, are outstanding, that are being filled. There are thousands of orders that we got in the past. We're down to about 200, 250 orders which I'm in the process of purchasing the kodak film to satisfy those consumers. As to outstanding processing orders, I would say there were roughly

4000 rolls of film within the past week that we processed. And I'm processing at the rate of about 2000 rolls a day. Each day we get in 1000 or 1,500 rolls. It would be difficult to determine.

MR. LEWT: As far as that film, by the end of next week, all of it should be out.

MS. CARLSON: But of course you will---- I'll wait until the regulation, but I'm sure you will be anxious to inform any consumers of any delay after six weeks.

MR. SEMINARA: On the orders of the film and the processing----see again, being that you're not familiar with the film and processing, meaning that you haven't gotten the film yet from Foto Factory, those orders are down to a nominal 200 or 250 orders. That would probably come under this direction, which is correct. And we're taking care of that and winding it down. Those orders we're getting in about 10 or 15 a day, and as they're coming in, we're pushing them right out. As to the processing only, that generally should be in the house 72 hours, at the maximum.

MS. CARLSON: If that is delayed to a great

extent, would it not be perhaps advisable to send the same kind of delaying notice.

MR. SEMINARA: It's generally not.

MR. LENT: We've never experienced that.

This change of the chemicals at the same time the machine broke down is out of the ordinary. We've never experienced that. There will be isolated cases of it yes, but not on a general case.

MS. CARLSON: Have you ever heard of a place called Photo Town stores?

MR. SEMINARA: Yes.

MS. CARLSON: Could you tell us what that is?

MR. LENT: That was a group of stores in Long Island, and we processed for them. In fact I was associated with Photo Town stores.

MS. CARLSON: So Foto Factory did processing work for Photo Town stores?

MR. LENT: Essentially what happened was, Foto Factory was a processing plant for Photo Town stores, and Photo Town stores paid Foto Factory. Photo Town stores closed, and currently-----

MS. CARLSON: When was that?

MR. LENT: About a year ago I think.

MR. SEMINARA: A year and a half.

MR. LENT: And any outstanding processing from Photo Town stores, Foto Factory is processing.

MS. CARLSON: I see, so just at the very beginning of Foto Factory were they processing for Photo Town stores?

MR. LENT: Yes.

MR. SEMINARA: We're still getting in mail to this day, from Photo Town customers.

MR. LENT: The majority of the Photo Town stores by the way, processing was you call, over the counter processing, where the customers would bring the pictures in and pick them up at the store. We also have that, which represents quite a bit of money that people never picked up, and they were notified two or three times.

MS. CARLSON: These are processed films?

MR. LENT: Right. And that's been paid for; the customers have not paid for it. We tried to recover some money from that, but we weren't able to.

MS. SCHWARTZ: And the film was actually on your premises?

MR. LENT: I have some of it, and some of it we've notified to some people, and they've picked it up.

MS. CARLSON: To your knowledge, were any customers charged on their charge account more than once for these introductory mailers?

MR. SEMINARA: Were the customers charged more than once?

MS. CARLSON: What I mean is, there was a \$9.95 charge for these mailers, is that correct?

MR. SEMINARA: Right.

MS. CARLSON: Were any ----do you know of any instances where customers were charged \$9.95 one week and \$9.95 the next?

MR. SEMINARA: It's possible because the tapes were so mixed that that same customer's name might have been on one tape, and might have appeared on another tape. Because we kept tapes according to, I don't know how it was done, zip code?

MR. LENT: It's a combination of zip code and name.

MR. SEMINARA: And if the customer reordered we never extracted his name from the lists, so it's

possible.

MS. SCHWARTZ: If we wanted to get a copy of your list of customers for the last two months, or the last month who lived in New York City, then it would be fairly simple to have it run off, if we paid the expenses?

MR. SEMINARA: Sure.

MS. CARLSON: Could you tell me -----

MS. SCHWARTZ: What if we didn't pay the expenses?

MS. CARLSON: What is Bike Factory?

MR. LENT: Bike Factory?

MS. CARLSON: Yes.

MR. LENT: Bike Factory was a business that we tried to start a long time ago. We bought some bikes and we advertised the bike, and we sold a lot of bikes. The guy who was supposed to get us the bikes didn't come through with the bikes, so that lasted two weeks. And what bikes we had were shipped, and the other customers were refunded.

MS. CARLSON: Now, is there any reason for the name Foto Factory or Bike Factory, or something of that nature to appear on any kind of receipts or

charges for film processing or film ordering?

MR. LENT: No, other than the fact that some of the money that was received from Bike Factory essentially was Foto Factory. It was just another name, and it may have gone through under the name Foto Factory, Bike Factory.

MS. CARLSON: Is there an account under the name Bike Factory at this time?

MR. LENT: No.

MS. CARLSON: When was that account closed?

MR. LENT: That was never an account really; we just wanted the customer to know it was Bike Factory.

MS. CARLSON: Was that name ever used on charge accounts?

MR. LENT: It shouldn't have been. It may have, if the thing said Bike on it, it may have said Bike Factory on it.

MS. CARLSON: And who was in charge of the Bike Factory?

MR. LENT: Well I guess I was for the two weeks it was there.

MS. CARLSON: And who else was involved for

those two weeks?

MR. LENT: All of us.

MS. CARLSON: The entire group that's involved with Foto-Factory?

MR. LENT: Everything was fine except we couldn't get any bikes.

MS. CARLSON: Just a few more questions I have. One is, when charges are made over the phone, what person, by name, fills out the forms?

MR. LENT: There are just any number of girls.

MS. SCHWARTZ: Women.

MR. LENT: I'm sorry.

MS. CARLSON: Employees.


MR. LENT: Employees. And no particular one individual.

MS. CARLSON: But now you're doing nothing by phone, is that correct? Or except to receive complaints?

MR. LENT: In fact we're just changing our complaint phone this week to the main number.

MS. CARLSON: What number is that?

MR. LENT: 4441.



MS. CARLSON: Have you ever heard from consumers that they've had trouble getting through to your phone?

MR. LENT: Yes.

MS. CARLSON: So now your business is totally through the mail, is that correct?

MR. LENT: Basically.

MR. SEMINARA: Yes.

MS. CARLSON: Previously when you did it by phone it was called Foto Phone?

MR. SEMINARA: That was another trade name, yes.

MS. CARLSON: Could you explain that?

MR. SEMINARA: Well we thought that as long as the Foto Factory concept was working at the beginning, we thought that it would be a good idea to use another type of trade name that might be a more catchier type thing where people might understand more readily. And we came up with the name Foto-Phone, and it didn't make any difference, they didn't understand anyway.

MS. SCHWARTZ: Have you ever used any other trade names besides Foto Factory, Foto Mats, and Foto Phone, excluding Bike Factory?

MR. SEMINARA: No. I don't think so.

MS. CARLSON: Did you at one time have problems with cameras, the ordering of cameras? Consumers ordered cameras which were not available?

MR. LENT: Right.

MS. CARLSON: Has that been resolved?

MR. LENT: Yes.

MS. CARLSON: Could you explain what happened and how it has been resolved?

MR. LENT: What had happened is, we figured if we could sell people the Kodak instamatic cameras at a low price they would come back to us for processing. So we bought some cameras and we started advertising. And we were selling them at \$1.00 or 50¢ above cost, in order to get that customer to buy from us and then send the film into us. All of a sudden the cameras did not become available, and we were just a little late in stopping the advertising.

MS. SCHWARTZ: How many days?

MR. LENT: A good part of our advertising was done three months in advance. So that occurred principally, I'd say December, January and February, I think, and that's all been resolved as far as I know.

MS. SCHWARTZ: Well how many days after you knew you couldn't get the cameras did the ads run?

MR. LENT: Well we never knew specifically that we couldn't get the cameras. It was always either they're coming, or it's an allocation, or things like this.

MS. SCHWARTZ: At some point you must have realized you were not going to be able to fill the orders.

MR. LENT: I really don't know at what specific point.

MS. SCHWARTZ: When they kept promising you the cameras and they didn't come, did you continue the advertisement.

MR. SEMINARA: These are magazine publications and you close on let's say for arguments sake, this is November, we might be closing in the January issue, which will break around the middle of December. So we'll close that issue now, and it won't break till the middle of December, and that will run for 30 days after. So if we found out, for arguments sake, in the middle of December, we couldn't get cameras, there was

no way you could stop it because they'd gone to press.

MS. SCHWARTZ: Did you advertise the cameras in other mediums besides magazines?

MR. SEMINARA: When we found out we couldn't get cameras, no.

MS. SCHWARTZ: What I'm trying to find out is, that when you found out-----

MR. SEMINARA: We stopped.

MS. SCHWARTZ: The day that you found out?

MR. SEMINARA: Sure.

MR. LENT: Yes, but there was never any one particular-----

MR. SEMINARA: The point is very relevant now with the new Poloroid the SX 70 camera. Everybody is advertising it, and right now we know-----we don't sell Poloroid cameras, but I happen to be very familiar with it, in that the dealers are on allocation. Even if your name is E.J. Korvette, you'll get 12 cameras, and that's it. And maybe next week Poloroid will turn around and say, "Okay, I've got 24 more cameras for you." So from one day to the next, you never know what their production is. At Kodak we ran into this problem last year, towards the end of

last year with the new pocket camera.

MS. SCHWARTZ: All right, let me just be clear on this. When did the advertisements----in what issues did the advertisements appear? January and February?

MR. SEMINARA: I would say the bulk of this occurred last year, and might have flowed over into 1973, but I don't know if it was a great deal.

MS. SCHWARTZ: And during what period of time did the negotiations for the cameras with Kodak continue?

MR. SEMINARA: Well we still try to get cameras from Kodak, but now it's not so bad, but I think it was pretty tight as late as May and June of this year.

MS. SCHWARTZ: Well for this particular offer I'm talking about.

MR. LENT: On that particular offer there were five or six different models. And our big trouble came in two models, I think. The rest of the stuff we were able to ship pretty much on time.

MR. SEMINARA: They were having difficulty filling their own production, and Kodak finally discovered

all of a sudden that they have what is known as a slush fund. Even though the dealer is on allocation, if there are problems of filling an order to a dealer, who have to really be nailed to the cross to get the delivery. So when we finally told them that in desperation that we want delivery, because we're having problems to get these cameras to the dealers---- to the consumer, Mike and I even went to Chicago and spoke to the Kodak representatives out there, and there is when we started to settle the problem.

MS. SCHWARTZ: Okay, now when did you pull those ads out?

MR. SEMINARA: We stopped advertising cameras, I would say, the beginning of this year.

MS. SCHWARTZ: January or February?

MR. LENT: The February issue.

MS. SCHWARTZ: The February issue is the last one?

MR. LENT: I think so.

MS. CARLSON: In the past have you used a toll free phone number?

MR. LENT: Yes.

MS. CARLSON: Are you still using one?

MR. LENT: That was discontinued about six months ago.

MS. CARLSON: For what reason?

MR. LENT: It was too expensive and it wasn't getting us results.

MS. SCHWARTZ: When did you go to Chicago to talk to Kodak?

MR. SEMINARA: March.

MS. CARLSON: Have there been any problems with some lucite frames?

MR. LENT: I don't think so.

MS. CARLSON: What was the arrangement where customers received lucite frames?

MR. SEMINARA: That was in our introductory offer.

MS. CARLSON: Could you explain how that worked?

MR. SEMINARA: That was an introductory offer on our photo finishing mailers which was for \$2.99 and might have been, if I remember, I think it was two 12 exposure mailers, or one 12 exposure mailer with a lucite frame.

MS. CARLSON: In other words, if they sent in

film to be developed, they would receive a lucite frame?

MR. SEMINARA: No. If they sent in \$2.99 or if they called in and wanted us to charge their account for \$2.99, we sent them an envelope which entitled them to develop free, it wasn't free, they're paying for it, but the mailer in itself represents a---- if they were to lose it, they'd be losing \$2.99 in fact, not \$2.99, they would be losing the value of the 12 exposure mailer, and they were getting the lucite frame with that.

MS. CARLSON: Do you intend to try and make reparations or amends so to speak, as far as the problems that people have had with Master Charge, or Bank Americard?

MR. SEMINARA: We have been in touch with the Bank Americard and Master Charge security divisions, and they are fully cooperating with me, and I am cooperating with them. Now we intend to straighten out every one of these problems. It's going to take a little time, but one of the things that we started to do was we made a print out by all the names that were affected by this recent mixup, and everyone of

these people are getting that letter that I presented to you before. That letter tells the customer that if in the event that their name was in a mixup with a computer, they may have received an introductory offer which they didn't order. That order should be returned, and of course, when they return it, their account will be credited. If on the other hand they could use them, then by all means keep them. The letter in itself was drafted by Master Charge bank manager. And this is what we're using, and we're working with them. In fact I'm also working along with the Federal Trade Commission, because they're getting complaints, and I'm in full cooperation with them.

MS. SCHWARTZ: Is this letter being sent to Bank Americard customers also?

MR. SEMINARA: Everybody. Anyone that was affected.

MS. SCHWARTZ: Are you still allowed to accept charges on the four accounts that you used before.

MR. SEMINARA: We're allowed to accept charges on Master Charge, but we've discontinued charges, period. Only on Master Charge. Bank Americard is coming down

to see me Monday. I could, but I don't want to, and in effect one account was closed down on us because of the problem. And it's not a matter of the fact whether we want to or don't want to, it's a matter of the fact that we have discontinued charges. Totally because of the fact that we're not in that business any more.

MS. SCHWARTZ: So you don't accept Master Charge any more?

MR. SEMINARA: Or Bank Americard.

MS. SCHWARTZ: Or Bank Americard, or American Express, or Diners Club?

MR. SEMINARA: No credit cards.

MS. SCHWARTZ: Could you tell me the name of the person at the F.T.C. you're dealing with?

MR. SEMINARA: Mr. Angelo Presti.

MS. SCHWARTZ: When you did send out film, did the film have a date after which the film was no longer good to use?

MR. SEMINARA: The film is sold to us with a date. In some cases it's considered short dated if it has six months life or four months life, and in some cases the normal dating on color film is

generally eight to nine months. When we run specials, we run a special on a particular type of film. If it's something that we can buy, say from Fuji film, they might be stuck with 1000 rolls of film, and they came to us and they said, "Would you like to buy this film and offer it to your consumer?" And we did that, and we lowered the price, and it gave the consumer a great buy, and it helped Fuji, and it helped us.

MS. SCHWARTZ: Was that usually the film that only had a short life left?

MR. SEMINARA: Yes.

MS. SCHWARTZ: What is the normal over the counter life in a regular price?

MR. SEMINARA: Color film is generally about nine or twelve months. It all depends on the type of film. There's a color film for pictures and there's pictures for slides and then there's for movies. And each one Kodak establishes by law, it has to establish a certain life for the film. Now that doesn't mean that the film is no good after the date. You can use the film ten years later, as long as it's kept.

MS. SCHWARTZ: And your advertisements didn't

include the life of the film?

MR. SEMINARA: It's not normal to do that.

MS. SCHWARTZ: I'm just asking. Okay, but let me just be clear. When you sent the film out, it was presumably in a package which was stamped by Kodak or Fuji with the date. I just want to be sure that the people who got the film knew the date that it was-----

MR. SEMINARA: Oh sure. It's always sold that way.

MS. SCHWARTZ: It's stamped on the package. But I just wanted to be sure that it was sent in that sort of package, rather than your own.

MR. SEMINARA: Yes.

MS. SCHWARTZ: I see. I'd just like to give you an opportunity, each of you an opportunity to say anything else you feel is necessary to clarify the record.

MR. SEMINARA: Well only that I want to reiterate that we're in full cooperation with any Consumer Affairs division, and I would like to invite you young ladies out to our plant so that you may review what Foto-Factory is all about, and you can

get a better insight of what is happening.

MS. SCHWARTZ: And also for the record, I'd just like to repeat the things which we've not got today, which you've agreed to supply us with. Now there's a copy of the Certificate of Incorporation, a copy of the order forms you sent out to people who asked for the, the places that you advertised, then and now, complaint files. I guess we would just look at them when we came out. And a copy of the letter which you sent to people when you ran out of film supplies, and the bank account numbers.

MS. CARLSON: Plus copies of records showing names, addresses and titles of all Foto Factory officers, stockholders and employees. Lists of the places of advertisement and promotional materials, both before and after the organizational change. And either original copies, or access to books, records, ledgers, profit and loss statements, or other materials revealing Foto Factories profit and/or losses.

MS. SCHWARTZ: Okay, any further questions or statements? This hearing is concluded with our thanks.

(Whereupon this hearing was concluded)

EXHIBITS

<u>Respondent's</u>		<u>Page</u>
A	Advertisement	28
B	Processing envelopes	44
C	Processing envelope	44
D	New fee schedule	46
E	Ad for processing only	48
F	Offer which was mailed	67
G	Letter of explanation from Bank	67

## C-E-R-T-I-F-I-C-A-T-E

92

STATE OF NEW YORK)

ss:

COUNTY OF KINGS )

DAVID LIBERMAN, being duly sworn, deposes and says:

That he was present during the above hearing before Hearing Officer Cheryl Schmitts and recorded verbatim by means of electronic recording equipment everything spoken during the hearing unless otherwise directed by the Hearing Officer.

That the foregoing pages are the true, accurate and complete transcript prepared from the verbatim record of Foto Factory, made by him on November 14, 1973.

*David Liberman*  
DAVID LIBERMAN (Reporter)

Sworn to before me this  
25th day of November 1973

*N. W. Kramer*

STATE OF NEW YORK)

ss:

COUNTY OF KINGS )

N. W. KRAMER  
COMMISSIONER OF DEEDS  
CITY OF NEW YORK 2-2132  
Certificate filed in New York County  
Commission Expires July 1, 1975

BARBARA KURITZKY, being duly sworn, deposes and says:

That she typed the transcript of the above hearing, and that it is a true, complete and accurate transcript of the recording made by David Liberman on November 14, 1973 as noted in his affidavit of certification.

*Barbara Kuritzky*  
BARBARA KURITZKY

Sworn to before me this  
25th day of November 1973

*N. W. Kramer*

N. W. KRAMER  
COMMISSIONER OF DEEDS  
CITY OF NEW YORK 2-2132  
Certificate filed in New York County  
Commission Expires July 1, 1975

# AFFIDAVIT OF MAILING

STATE OF NEW YORK

COUNTY OF KINGS

EASTERN DISTRICT OF NEW YORK, ss:

-----EVELYN COHEN-----, being duly sworn, says that on the 15th-----  
day of December, 1975, I deposited in Mail Chute Drop for mailing in the  
U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and  
State of New York, a Government's Appendix-----  
of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper  
directed to the person hereinafter named, at the place and address stated below:

Albert R. Pincus, Esq.-----	Robert Rivers, Esq.
2950 Hempstead Turnpike	287 Post Avenue
Levittown, N.Y. 11756-----	Westbury, N.Y. 11590

Sworn to before me this  
15th day of Dec. 1975

*Olga S. Morgan*  
OLGA S. MORGAN  
Notary Public, State of New York  
No. 247501785  
Qualified in Kings County  
Commission Expires March 30, 1977

-----  
*Evelyn Cohen*  
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